

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)
METRO CODE TO CLARIFY AND SUPPLE-)
MENT EXISTING PROVISIONS RELATED)
TO THE MANAGEMENT OF PETROLEUM)
CONTAMINATED SOILS, AND DECLARING)
AN EMERGENCY)

ORDINANCE NO. 91-422 B
Introduced by
Councilor Wyers

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

(m) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.

(n) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

(o) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

(p) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

(q) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil,

which materials will be transported or sold to third parties for reuse or resale.

(r) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

(s) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

(t) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005;
- (2) Radioactive wastes as defined in ORS 469.300;
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; or
- (4) Explosives.

(u) "Solid Waste Management Plan" means the Regional Solid Waste Management Plan.

(v) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(w) "User Fee" means a user fee established by the District under ORS 268.515.

(x) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
- (5) Persons who process, transfer or dispose of solid wastes which:
 - (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
 - (B) Have been source separated;
 - (C) Are not and will not be mixed by type with other solid wastes; and
 - (D) Are reused or recycled.
- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.

- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 3. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise;
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee;
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage, in the amounts of not less than \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law;

- (4) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer;
- (5) A duplicate copy of all applications for necessary DEQ permits and any other information required by or submitted to DEQ;
- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused;
- (7) Proof that the applicant has received proper land use approval; and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 4. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agree-

ment with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 5. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

"5.01.230 Additional Provisions Relating to Issuance of a Franchise for a Facility Processing Petroleum Contaminated Soil:

(a) The requirements of this Chapter shall apply to the processing of Petroleum Contaminated Soil as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a

franchise under this Chapter. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.

- (2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a franchise under this Chapter, and shall not be required to remit user fees to the District for soil so treated.
- (3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a franchise under this Chapter. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) In addition to any other conditions imposed under this Chapter, a franchisee of a petroleum contaminated soil facility shall be subject to the following conditions:

- (1) The franchisee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;
- (2) In addition to the information required to be submitted under Metro Code Section 5.01.130, the franchisee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:
 - (A) Amount and type of material processed at the facility;
 - (B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;

- (C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

Section 6. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:


Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility franchised by Metro under Code Chapter 5.01 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility franchised by Metro under Code Chapter 5.01."

Section 7. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this 10th day of October, 1991.



Tanya Collier, Presiding Officer

ATTEST:



Clerk of the Council
TSS
1051-B

Exhibit A

CHAPTER 4 - ILLEGAL DUMPING

POLICY

4.0 Metro, in its capacity as manager of the region's solid waste disposal system, will work cooperatively with DEQ, cities and counties to promote proper disposal of solid waste and to reduce illegal disposal.

* * * * *

DISCUSSION

This Chapter represents a program to address illegal dumping based on what is known today. This is a dynamic issue and, therefore, the programs identified in the Chapter will likely change over time as the region learns more about how to effectively address this problem.

The Illegal Dumping Chapter addresses the problems associated with illegal disposal of solid waste in the Portland metropolitan area. Analysis for the Chapter establishes that illegal dumping occurs in the Metro area as a result of several factors including:

- continuing increases in per capita waste generation;
- confusion about disposal options available upon closure of the St. Johns Landfill;
- lack of public awareness about viable recovery and disposal options available for items such as waste tires and refrigerators;
- continuing increases in the costs of solid waste collection, transport, recycling, processing and disposal; and
- having a collection system in which participation is voluntary not mandatory.

The literature indicates that in a solid waste system where the costs of providing collection service are recovered through a type of user fees and participation in collection service is not mandatory, the incidences of improper disposal increases with rising costs.¹

Policy 4.0 points out Metro's responsibility, as manager of the region's solid waste disposal system, to work cooperatively with DEQ, cities and counties to promote proper disposal of solid waste and to reduce illegal disposal.

¹Said Atri and Thomas Schellbert, "A Market-based Approach to Solid Waste Management," *American City and County*, July 1991, p. 56.

The Chapter has been developed with the input of state and local government as well as non-profit citizen organizations, and recognizes the roles of all affected parties. The Illegal Dumping Chapter addresses the issue by identifying causes, characterizing various facets of the problem and recommending solutions for appropriate individuals and agencies.

The objective of the Illegal Dumping Chapter is to reduce the incidence of illegal disposal of solid waste in the Portland metropolitan region in order to:

- mitigate an unsightly and potentially health-threatening problem;
- ease the financial burden of abatement on local governments and property owners;
- remove illegal dumping as an obstacle for meeting waste reduction goals; and
- capture disposal revenue that is otherwise lost.

Background information was compiled from interviews with local government solid waste and nuisance control staff in the metropolitan area. Recommendations to mitigate illegal dumping in the Portland metropolitan area are presented in the final section of the chapter and are tailored to appropriate agencies and individuals.

There are some issues the chapter does not address due to regulatory constraints, overlapping of authorities and a need to keep the scope of analysis focused on issues of regional significance. These issues include the following:

- *Hazardous waste disposal* is regulated by federal and state laws that impose criminal penalties for violations. In terms of regional coordination of penalties, illegal dumping of hazardous wastes should remain a criminal violation, rather than a civil violation, to effectively deter incidence.
- *Medical waste disposal* is addressed in the Special Waste Chapter of the RSWMP. Collection is regulated by local governments and disposal is regulated by Metro under state law.
- *Roadside litter*, except that which is found in solid waste facility impact areas, is an issue that was separated from roadside illegal dumping. Although specific volume or quantity guidelines were not developed, it is relatively easy to delineate litter from dump sites.
- *Private industrial dump sites*. Some local industries may store or dispose of specific materials on their property. Metro does not have the ability to regulate this practice as the material may be a source-separated recyclable material and may not be considered a waste until an attempt is made to

dispose at a Metro facility. Regulation of this practice must be through local industrial zoning codes.

BACKGROUND

Illegal dumping is defined as improper disposal of solid waste in violation of state or local waste management laws. Illegal dumping of solid waste is unsightly and unsanitary in addition to creating potential environmental problems. Nationwide, incidence of illegal dumping of solid and hazardous waste has increased along with the cost of environmentally responsible solid waste management. It is believed that incidence of illegal dumping rises with increased disposal fees.

National Context

State governments in Massachusetts, Vermont and New Jersey are approaching the problem by establishing rewards and increasing fines. In Georgia, property owners are liable for illegal dumping violations, a situation which results in an incentive for property owners to apply both preventive measures and immediate cleanup. Local governments in Collin County, Texas and Alachua County, Florida focus on community awareness and siting roadside refuse and recycling containers as a tool for reducing the problem.²

In New York City, sanitation police are authorized to impound the cars of violators caught illegally dumping. As many as 314 vehicles were impounded during a two month period in 1990. Fines range from \$600 to \$12,500 may be levied against drivers and owners of vehicles, who must post a bond, pay an impoundment fee and a daily storage fee to reclaim their vehicle.³

Memphis, Tennessee approaches illegal dumping through establishment of an Environmental Court to handle municipal code violations related to health, fire, housing, building and zoning codes. Prior to establishing the environmental court, the morale of enforcement personnel was low because judges dismissed the cases of illegal dumping that were brought forward. Establishing the environmental court has resulted in increased enforcement, overall enhanced code compliance and reduced incidence of illegal dumping.⁴

Nationwide, individuals and agencies involved in illegal dumping issues agree that consequences, costs and environmental effects of

² Shirley Hawk, "Making War on Illegal Dumping," *Waste Age*, November 1989, p. 108.

³ "Police Nab Illegal Dumpers," *World Wastes*, August 1990, p. 10.

⁴ Shirley Hawk, "Making War on Illegal Dumping," *Waste Age*, November 1989, p. 108.

illegal dumping must be understood by the population at large so that needed legislation and funding can be developed to address the problem.

Local Issues

Illegal dumping in the Portland metropolitan area occurs on a wide-range of sites, includes a variety of materials and affects broad segments of the population. Research identified the following local problems associated with illegal disposal:

- Enforcement of illegal dumping regulations is difficult because, under the status of criminal violations, illegal dumping cases do not receive priority in the criminal justice system.
- Various local government agencies are assigned enforcement responsibility and neither enforcement mechanisms nor penalties are consistent from jurisdiction to jurisdiction. It is believed that consistency in enforcement procedures would lead to a greater level of enforcement. For example, if local government road maintenance personnel, law and code enforcement personnel, and legal personnel all have an understanding of the procedures for reporting violations, issuing citations and hearing cases, the result would be an increased probability that such violations would lead to effective enforcement.
- Illegal use of dumpsters at retail, commercial and industrial sites is increasing. This has been identified as a particular problem along commercial strips in Clackamas County.
- Non-profit charitable organizations report that illegal dumping at their facilities and drop-off centers has increased over the past few years. A large majority of this material is so contaminated it can not be sorted and must be immediately disposed. The cost of disposing of this waste has had an especially hard impact on these agencies serving lower-income clients.
- Illegal dumping is occurring at vacant lots in low-income residential areas of the region. Illegal disposal is a common occurrence in a wide range of residential areas but it appears that there is a higher incidence in neighborhoods that appear less affluent. Unlicensed "handyman" haulers may be profiting from a situation in which residents who are unable to afford regular garbage service pay such unlicensed haulers to have their refuse disposed. The hauler then illegally dumps the refuse. It is speculated that this is occurring as a result of increasing tip fees, unregulated collection by unlicensed haulers and the proximity of vacant lots in low-income areas.

- Incidence of illegal disposal has been increasing along the Sandy River Highway, and Clackamas County roadsides. A traditional method of rural waste management has been disposal of waste on one's own property or self-haul to a disposal site. Due to the lack of conveniently located facilities for self-haulers, the cost and time associated with hauling to regional disposal sites, and the relative abundance of lightly traveled roads, illegal disposal is a problem in many rural areas of the region. The cost of clean-up can be expensive when material is disposed of in steep ravines or gullies.
- Portland parks (Forest Park), Rivergate industrial park, Troutdale Airport, Portland International Airport, and the Hillsboro Airport all experience problems with illegal disposal. Large tracts of park and recreational space are also subject to illegal disposal activity. Illegal disposal sites create a marketing problem for industrial sites and damage wildlife habitat within parks.
- Illegal disposal of bulky materials such as white goods, tires, and car bodies is a problem. Bulky items require unique collection practices. Pick up service for these items is not readily available in many parts of the region. Unregulated haulers may provide inexpensive pickup only to later dispose of the items inappropriately.
- Illegal disposal of construction/demolition debris and land-clearing debris as inert fill presents a widespread problem throughout the region because inert fill sites are unprotected and unsupervised. Use of inert fills as disposal sites for mixed waste poses significant risk to the environment.

Metro Region Context

In June 1988, Metro completed a survey of sites where illegal dumping of waste was known to occur. The survey was conducted to establish a baseline of information to determine if illegal dumping would increase with rising tip fees. Metro updated its information base on illegal dumping in 1989 in an effort to:

- measure the effect, if any, of subsequent rate increases on the number of illegal dumping incidents;
- establish the location of sites within the Metro area where illegal dumping is a chronic problem; and
- assemble background information to assist in defining the scope of the problem.

The initial survey was intended to identify sites and drew no conclusions. The 1989 follow-up survey concluded that illegal dumping was a problem in the region, but it was difficult to demonstrate that

rate increases directly contribute to illegal dumping of refuse by a greater number of individuals.

Further analysis of illegal dumping issues in the metropolitan area was conducted and is contained in the appendix to this chapter. The appendix includes a map of identified dump sites, an analysis of local government illegal dumping programs as they exist in 1991, an analysis of costs of illegal dumping to local governments, and an identification and analysis of some of the causes of illegal dumping.

The map in the appendix to this chapter is a compilation of known illegal dump sites in the Metro region from the initial survey in 1988 to 1991. The map indicates patterns of illegal dumping in both densely populated urban areas and more secluded rural areas of the region. Many of the sites indicated are sites where dumping is a chronic problem. The map is illustrative of some known illegal dump sites and demonstrates the severity of the issue for the Metro region but it is not an exhaustive identification of all illegal dump sites.

The analysis of local government illegal dumping programs as they exist in 1991 identifies how each county and the city of Portland have approached the problem in the past. Included is a discussion of enforcement procedures and penalties.

The analysis of costs of illegal dumping to local governments explores costs associated with cleaning up illegal dump sites, enforcing laws prohibiting illegal dumping, costs of prosecution, and includes a discussion of fines recovered through prosecution.

The analysis of the causes of illegal dumping establishes the causes and the effects of illegal dumping as they relate to identified sites, materials and affected parties.

SUMMARY

Throughout the country, illegal dumping is an issue that appears to be growing in significance. It is generally agreed that there is a need to educate the public as to the consequences, costs and environmental effects of illegal dumping.

Illegal dumping also continues to be a problem in the Metro area. If rising disposal fees do indeed affect the incidence of illegal dumping, then it may be assumed that the problem will continue to increase in proportion. An analysis of collection options would be a meaningful exercise in addressing potential solutions to illegal dumping in the metropolitan area.

The analysis conducted in developing this chapter identified materials, affected parties and locations in the Metro area where illegal dumping is a chronic problem, and demonstrated that the largest issues are enforcement, lack of effective penalties, lack of knowledge of appropriate disposal options, dumping in vacant lots in

residential areas, public and private open spaces, waste tires and litter at solid waste facility impact areas.

REGIONAL ILLEGAL DUMPING PROGRAMS

This section identifies management solutions to illegal dumping, outlines the Regional Illegal Dumping Work Program and addresses implementation roles and responsibilities.

Enforcement

There is a need for both increased enforcement of existing laws and consistency of enforcement penalties. Currently, state agencies and each local jurisdiction handle illegal dumping through different divisions. If all local governments approach illegal dumping with a similar enforcement process, more cases would be successfully prosecuted. This would be a significant deterrence factor to those contemplating acts of illegal disposal. Local budget constraints result in placement of illegal dumping enforcement as a lower priority. This situation is exacerbated by the fact that, under the criminal penalty system, it is difficult to get a conviction for illegal dumping violations without eyewitness identification. Passage of HB 3361 addresses this issue by enhancing local governments' ability to prosecute illegal dumping as a civil violation rather than a criminal violation. The following recommendations address enforcement:

- Develop or amend local nuisance codes to enhance the ability of local jurisdictions to enforce against illegal disposal. Currently, nuisance codes in most jurisdictions are not easily enforced. An exception is Clackamas County, which has the ability to threaten confiscation of vehicles to cover the cost of clean-up of an illegal dump site.
- Consistent penalties. There is a need for development of a model illegal disposal ordinance with provisions for consistent and effective penalties. Such an ordinance would serve to assist local governments implement the provisions of House Bill 3361 (1991), which is legislation aimed at increasing penalties for illegal dumping and enhancing the option of prosecution of illegal dumping as a civil violation rather than a criminal violation. The model ordinance will help local governments clarify local authorities and thus enhance their enforcement efforts.

Education/Promotion

One of the most effective means of addressing illegal disposal is to educate the public as to costs and consequences of their actions and promote appropriate recycling and disposal practices.

- Public education. Greater awareness of the environmental and economic consequences of illegal dumping could result in fewer incidents. Many individuals who dispose of yard debris in ravines do not consider their actions to qualify as illegal dumping. A public campaign to inform the public of the location of transfer stations and other disposal sites would also result in a decrease in illegal dumping. Educational programs should target potential illegal dumpers. For instance, young persons with an interest in working on automobiles should gain an understanding of appropriate junk car and waste tire disposal practices. Individuals and businesses that do yard maintenance work and landscaping should be targeted with materials describing appropriate yard waste recycling and composting options. The public at large needs to be better informed of options for recycling and disposal of bulky materials including furniture and appliances.
- Hotline for reporting illegal dumping. More incidents of illegal dumping would probably be reported if an easily remembered public hotline were made available. The hotline number could be directly referred to nuisance abatement enforcement personnel.
- Region-wide annual clean-up events. Currently, localized clean-up events are sponsored by neighborhood and non-profit organizations, such as scout troops in cooperation with haulers. More coordinated cleanup events are sponsored by Stop Oregon Litter and Vandalism (SOLV). Regular semi-annual cleanup events that are coordinated on a region-wide basis would offer an opportunity for a greater number of individuals, businesses and organizations to have an effect on existing dump sites and increase public awareness of the problem. Metro, local governments and haulers could combine forces to promote cleanup events similar to household hazardous waste collection events.

Preventive Measures

Illegal dumping has been reduced in some cases through installation of barricades. This is a costly solution initially but may result in lower long-run cleanup costs.

- Barricades and improved lighting at known sites of illegal dumping activity have demonstrably reduced the number of dumping incidents. Barricades may either be temporary or permanent. If permanent barricades such as concrete highway dividers or guard-rails are installed, factors such as liability, aesthetics and maintenance must be considered.
- Increased signage may deter potential dumpers. Warning signs in areas that are known illegal dump sites have been used to discourage dumping in the recent past in Portland and Multnomah County. Clackamas and Washington Counties have also placed warning signs at problem sites. There is a deterrence factor associated with having a sign stating that the activity is

illegal. Signs should reflect the severity of potential penalties.

Improvement of Service

Convenience has been identified as a factor causing some illegal dumping. If service can be improved to the point that it is as convenient to recycle and dispose of refuse, the option of illegal dumping will be less attractive. Improvement of service may include instituting more efficient refuse and recycling collection systems.

- Conveniently located disposal and recycling facilities. Distance from site of generation to disposal and recycling facilities may act as a disincentive to responsible disposal practices. Recycling and disposal containers located in areas where there is a high incidence of illegal dumping have proven to be effective in deterring illegal dumping along highways in rural Bulloch County, Georgia. The County maintains the containers under the premise that it is more cost-effective than cleaning up illegal dump sites.

This management alternative would probably not be as effective in the Metro region for several reasons. In Oregon, solid waste collection is not a mandatory service. This practice results in several homeowners hauling their own refuse to disposal. Placement of disposal containers throughout the region as a deterrent to illegal disposal would probably result in increased incidents of self-haulers utilizing these free disposal containers rather than paying to take their solid waste to an appropriate facility.

If a local government desired this type of program as a means to manage illegal disposal it would be prudent to have these sites staffed and maintained on a continuous full-time basis. The benefits possibly derived from conveniently locating these facilities may be outweighed by the cost of maintenance and disposal of solid waste collected at the sites. Therefore, local governments would have to weigh the cost of providing and maintaining containers with the cost of remediating illegal dump sites.

Funding/Incentives

For those problems that have been identified as economic in nature, means of providing funding and/or economic incentives to appropriate parties is addressed.

- Enhanced recycling incentives. If it was more convenient and economically viable for waste generators to recycle bulky items, fewer individuals would be prone to dispose of recyclable items illegally. Incentives to recycle yard debris exist through lower rates at processing and disposal facilities by Metro, local

governments and recyclers. There are deposits on lead-acid batteries that results in a higher level of recycling and diverts them from the landfill. Future deposits on items such as tires, bulky furniture and appliances may fall in this category. This would provide a strong incentive to recycle the item. The public utility in British Columbia has undertaken a program to buy back and recycle old refrigerators for \$50 with the purpose of improving energy conservation programs. Such a program also has the added advantage of removing problem items from the illegal dumping wastestream.

- Subsidies for low-income households. Some illegal dumping may occur because of economic hardship. If required collection service is instituted, the financial burden will increase. This issue would require extensive policy analysis.
- Metro should continue to assist in funding local community cleanup events. Metro includes funds in its annual budget to support community cleanup efforts.

Untarped Loads at Solid Waste Facilities

Uncovered loads arriving at transfer and recycling facilities result in a significant amount of litter that is blown off the open vehicles. This is a problem with both commercial waste haulers and individual who choose to self-haul. Metro has instituted an approach to discourage litter at facilities by levying a \$25 surcharge for cash customers and a \$100 surcharge for credit account customers with loads that are not fully covered and contained.

The approach of levying a surcharge may be more effective than other measures. If untarped loads were refused altogether, loads that would otherwise have been disposed properly may be subject to illegal disposal by frustrated individuals.

Bulky Materials (Furniture, Appliances, Autos)

Improvement of Service. Pick up service for bulky materials should be enhanced, especially in areas outside of the City of Portland. Individuals who live in Portland and wish to recycle or dispose of an appliance may have it picked up for a nominal charge by one of several light-haulers, waste haulers or recyclers. However, Portland's proposed residential franchise system, scheduled for implementation February 1992, requires that the franchised hauler provide on-call service for removal of bulky materials. Alternatives include free drop off at Metro transfer stations or drop off at one of two scrap recyclers. Individuals outside of the city of Portland may have their bulky materials picked up on call by franchised haulers for an additional fee, but there should be some uniformity of factors such as making known the availability of the service through publicity and establishing, through franchise agreements, reasonable fees for the service. There is a need for the fee for pick up of bulky materials

to be reasonable so that it does not act as a disincentive for the public to use the service.

Education/Promotion. Education of recycling/disposal options and consequences of illegal disposal of these items should be a priority. Metro's Recycling Information Center currently receives numerous calls per week requesting information on recycling/disposal options for appliances alone. This indicates a need for better promotional efforts.

Funding/Incentives. Incentives for haulers to establish improved on-call service for pick up would result in less illegal dumping, particularly in areas outside of the City of Portland. Currently, there are only two recyclers registered with the Recycling Information Center providing pick up service for appliances in Portland. There should be an effort to register additional haulers with the Recycling Information Center since registration will offer a greater certainty that persons offering pick up service for bulky materials will not dispose of the materials improperly.

Construction and Demolition Debris (C&D)⁵

Programs for enhanced recycling of C&D debris are currently being implemented in the region. The following recommendations for C&D debris could be in the form of programs developed and implemented by Metro as part of the Special Waste Plan and also could be incorporated into annual local government waste reduction programs.

Enforcement. To stem illegal disposal of C&D materials, it is necessary to target construction and demolition permitting practices. Applications for building and demolition permits could include a statement of how a contractor is disposing any C&D materials. Proof of disposal, such as a landfill or C&D processor's receipt could be made a requirement that local governments could include in the permit process.

Improvement of Service. Haulers and recyclers who specialize in serving construction and demolition sites may have a need to operate in a franchised collection area, resulting in a potential violation of a collection franchise agreement. This situation must be addressed in such a way as to both stem incidence of illegal dumping and to enhance recycling of C&D materials. A process to allow C&D recyclers to subcontract with franchised haulers should be more clearly defined, possibly in renewals of franchise agreements.

⁵ Roles, responsibilities, recycling practices and regulatory recommendations for C&D materials are addressed in Chapter 3, Special Waste.

Waste Tires

In 1987 the Oregon Legislature passed House Bill 2022 to address the problem of waste tires, setting up the Waste Tire Program. The Program was amended by 1991 HB 2246. Through the Program, DEQ requires a permit for storage and transport of more than 100 tires, and a permit for persons in the business of transporting waste tires. Exceptions to the hauling permit requirements include government carriers, persons hauling to retreaders, and persons hauling fewer than five tires. House Bill 2246 (1991) changed the exemptions to include one-day cleanup events and also to allow refuse haulers to carry more tires without a permit.

Activities of the program are mainly concentrated on cleanup of large tire piles, which constitute a significant health and fire hazard. Cleanups have occurred in several parts of the state. Currently, DEQ has participated in community cleanup efforts in an advisory capacity. A point system for prioritizing abatement efforts and allocating necessary funds has been developed by DEQ. The point system takes into account a number of criteria including pile size, characteristics of the site and size of the nearest affected community.

Metro entered into an intergovernmental agreement with DEQ in March 1990 for shared funding of a waste tire recycling project. The project entails development of road construction specifications for the application of rubber-modified concrete in highway construction.

While DEQ's Waste Tire Program has been effective in controlling larger tire piles throughout the state, it has not been used on sites with less than 1,000 tires. Further analysis of how the Waste Tire Program affects illegal dumping in the Portland metropolitan area reveals that:

1. DEQ's Waste Tire Program is currently more focused on cleaning up large tire piles than with assisting in community cleanup efforts that may produce small quantities of waste tires. The department may get more involved in projects that involve smaller quantities in the future after larger tire piles are remediated.
2. DEQ may be able to assist local governments with funding for waste tire cleanup efforts. The particulars of this sort of arrangement need to be investigated. There is a need for government agencies affected by illegal dumping of tires to express the nature and severity of the problem to DEQ.
3. There should be an easier means of disposing or recycling waste tires available for people in the Metro area. Getting tires out of the hands of potential dumpers would involve tightening the trade-in arrangements for people buying new tires.

Based on the above information, the following options should be followed to reduce the incidence of illegally dumped waste tires:

- DEQ's Waste Tire Program should include community cleanups. Since most tires in the state are purchased in the Portland metropolitan area, most of the funding for the Waste Tire Program is derived from residents of the region. Therefore, the Waste Tire Program should make cleanup of illegal disposed tires in the Metro region a higher priority.
- A program should be initiated whereby tires dealers accept one waste tire for every new tire they sell and mount. This policy would not have a significant impact in terms of administrative responsibility on the part of tire dealers, who are currently required by statute to keep records of tires sold for the purpose of administering the surcharge on new tires that pays for the DEQ Waste Tire Program. Tire dealers could pass their cost of proper recycling or disposal through to customers.
- A waste tire collection event could be sponsored jointly by DEQ, Metro and local governments. Waste tire collection events have been successfully conducted in Olympia, Washington and Baltimore, Maryland, where the waste tire collection events have been conducted by Boy Scout troops for fund-raising. Locally, the collection event could be modeled after prior successful events such as Metro's household hazardous waste events or DEQ's pesticide collection event. Such an event would offer an option to individuals who may have tires stored in their garage and are not able to have them picked up by their hauler, thus reducing the potential improper disposal.

REGIONAL ILLEGAL DUMPING WORK PROGRAM

The following section describes the roles for Metro, local governments, DEQ, citizen groups and waste haulers to successfully reduce illegal dumping in the metropolitan area:

■ Metro

Through the solid waste planning process, Metro has taken steps to identify the issues associated with illegal dumping by providing coordination and a forum for state and local agencies and concerned citizens to discuss the issues and develop broad solutions. Enforcement of illegal dumping regulations and nuisance codes is a function of local governments, therefore, Metro can best assist in this area if enforcement and penalties are coordinated throughout the region.

- Mitigate litter problems at solid waste facilities. Metro currently has contractual provisions to minimize litter in

solid waste facility impact areas for Metro facilities. Metro will continue this emphasis at Metro-owned facilities as well as through franchise agreements with non-Metro facilities to assure that litter is minimized at all solid waste facility impact areas in the region.

Timeline: Ongoing

- Continue to provide education and promotion of proper solid waste reduction, disposal and recycling practices.

Timeline: Ongoing

- Continue to assist with funding local government and citizen group community cleanup efforts. Metro budgets for assistance with cleanup of illegal dump sites each fiscal year. Metro should continue to respond to illegal dumping through this mode.

Timeline: Ongoing

- Support local governments in the legislative process on issues that will result in increased effectiveness in mitigating illegal dumping activities.

Timeline: Ongoing

Enforcement

Work with local governments to establish a process for a regional hearings officer, based on provisions of House Bill 3361. A regional hearings officer can effectively reduce the work load of local justice systems by handling illegal dumping violations. This would require local governments to establish similar enforcement standards throughout the region to ensure efficiency. Metro will provide local governments with a model enforcement code to initiate the development of regionally consistent enforcement standards.

Establishing the regional hearings officer process would clarify and reinforce the substantial discretion of local government code enforcement officers. Either through routine inspection or acting on citizen complaints, the enforcement officer has authority to cite an individual for illegal dumping based on eyewitness evidence or based on identification of names on envelopes or other printed items found in the dumped materials. The code enforcer would have the discretion to request that the individual clean up the dumped materials and the discretion to levy all or part of the penalties as provided by the adopted model ordinance. If evidence is sufficient, the code enforcer may pursue a criminal penalty through his or her local justice system. This is the desired approach if a penalty of community service is the object, as the regional hearings officer would not have clear authority to levy a penalty of community service. The regional

hearings officer process would be engaged if the person alleged to have dumped the material contests the code enforcement officer's determination and the local decision is made to use the hearings officer service rather than pursue a criminal penalty.

Process

The specific guidelines that describe how a regional hearings officer proceeding is initiated will be developed in the model ordinance. Generally, the citation brought before the hearings officer will include the name and address of the respondent, address or location of the alleged violation, nature of the violation with proper code citation, type of relief sought, and identification of the entity initiating the procedure. The hearings officer would have the authority to administer oaths, take the testimony of witnesses and issue subpoenas in accordance with the Oregon Rules of Civil Procedure. The person alleged to have committed the violation has the right to submit evidence and cross-examine witnesses.

The hearings officer would schedule the hearing and make a determination after consideration of the evidence and arguments. If the violation has not been established, an order dismissing the complaint is entered into the record. If the violation has been established, the hearings officer enters into the record an appropriate order, a copy of which is delivered to the person found guilty. The person found guilty may file an appeal within an established timeframe.

Fines

All participating jurisdictions should adopt the same fine schedule. When the hearings officer makes a determination of a violation, a fine will be imposed. The intent of the fine is punitive. The primary intent of collecting costs is to recover the costs of cleaning up the specific site(s) named in the complaint, recovering the administrative costs of conducting hearings and recovering costs associated with local code enforcement measures. The schedule of fines and costs will be established through development of the model ordinance. The model ordinance should contain a provision requiring a hearings officer to levy a minimum fine if the person is found guilty of the charge. This would assure the deterrence factor of having the hearings process in place.

Options for Implementing

- Establish regional hearings officer function as an adjunct to Metro's Office of General Counsel.
- Establish regional hearings officer as an independent contract to Metro and local governments to process cases.

- Establish regional hearings officer as a non-attorney. A hearings officer does not necessarily have to be an attorney. The Department of Environmental Quality (DEQ) authorizes their staff to act as hearings officers. Hearing illegal dumping cases could be a rotating responsibility of local government, Metro staff or an independent contracted party.
- Establish regional hearings officer program through the Young Lawyers Division/Multnomah Bar Association. For a small fee for each case, the Young Lawyers Division offers the services of young attorneys in who want to gain experience in administrative cases. Members of the Division have successfully provided services to the Housing Authority of Portland and currently provide services to Multnomah County for animal control cases for \$15 per case.

Funding Options

- Local governments could be billed on a per-case basis for hearings. If the Young Lawyers Division attorneys were used, the per-case cost would be in the neighborhood of \$15 per case.
- The costs of the hearings officer process could be recovered through assessment of fines and costs. Costs would include additional administrative and maintenance costs that extend beyond each individual case.
- Participating jurisdictions could pay into a pool of funds that would cover the maintenance and administrative costs. Unexpended funds could be returned to local governments.

Timeline: Subject to local government action on establishing consistent local enforcement provisions.

Model Enforcement Code

- Develop a model regional enforcement code for use by local governments, based on provisions of House Bill 3361. Local governments presently address illegal dumping violations through a variety of means. The City of Portland works through its bureau of buildings, Washington County through its Health Department, and Clackamas County through a solid waste department. If regulations concerning illegal dumping were developed in a consistent format in a handbook that also describes new provisions of HB 3361, it follows that enforcement would be more consistent and effective.

Timeline: December 1992

Promotion/Education

- Work with local governments in developing a regional promotion and education program to address illegal dumping issues including education of the problems associated with illegal dumping, enforcement programs and options available for proper disposal and recycling.

Collection Options Analysis

- Analyze the various refuse collection options, their cost, efficiency, impact on illegal dumping and potential for recovering lost system revenues. Alteration of solid waste collection service is a potential solution to mitigate illegal dumping. Mandatory collection may offer a broad solution to the problem. Since mandatory collection would be a significant shift from present practices, the issue must be thoroughly analyzed and the input of all affected parties must be obtained. State law gives authority to cities and counties for establishing the level and character of collection service. Metro could perform this analysis in order to provide cities and counties with a factual basis from which they may consider adjustments to their collection services.

Timeline: December 1992

Tire Trade-in

- Initiate a program whereby tire dealers within the Metro boundary will accept one waste tire for every new tire sold and mounted. Traction tires would be excepted from the requirement. This measure would help reduce the number of waste tires that are illegally dumped by channeling a greater number of waste tires to tire dealers who are better able to recycle or dispose of them properly. The one-for-one trade in requirement would not be an additional administrative burden since, currently, tire dealers are required by statute to keep accurate records of tires sold.

Timeline: June 1992

Future Legislation

- Monitor illegal dumping programs throughout the development and implementation of this chapter in order to plan for additional legislation, if needed.

Timeline: Fall 1992

Waste Reduction Annual Work Program

- Work with local governments to initiate a local program of requiring building/demolition contractors to specify on local

permits where their waste will be managed. This required statement of waste recycling and/or disposal by contractors should be identified as a task for local governments in the 1992/1993 waste reduction annual work program.

Timeline: 1992/1993

■ *Local Government*

Local governments are directly affected by illegal dumping. They respond to complaints, identify sites, provide crews to clean sites and pay or recover the costs. Local government roles are to:

- Support Metro's efforts by working cooperatively through the planning process to establish an illegal dumping enforcement process that is consistent regionwide. This includes local adoption of consistent enforcement mechanisms based on the regional model enforcement code to be developed by Metro in cooperation with local governments.
- Support regional illegal dumping program efforts by implementing provisions of House Bill 3361, which allows local governments to increase penalties for illegal dumping and impose civil penalties for certain illegal dumping violations.
- Continue to enforce illegal dumping through local nuisance codes. Until a model enforcement code is developed by Metro to assist local governments in changing their local codes, cities and counties should continue to identify dump sites and prosecute violators with existing remedies.
- Continue to provide waste reduction and recycling educational and promotional information outlined in local government waste reduction programs. Increased recycling and waste reduction programs should reduce the overall amount of illegal dumping. Continued education and promotion will help to achieve these goals.
- Initiate further mitigation efforts and approve new waste reduction programs aimed at both enhancing waste reduction and eliminating illegal dumping. As part of the waste reduction programs for local governments, cities and counties are providing some portion of an FTE to focus on solid waste and recycling issues. The person in this position could provide a valuable link between nuisance abatement and waste reduction efforts through coordinated information and facilities.
- Enhance efforts to license or regulate "handyman" haulers. It has been demonstrated through investigations by the Port of Portland that part-time "handyman" haulers contribute significantly to illegal dumping. Local governments should

have available regulation through business licenses or itinerant⁶ merchant ordinances. Regulation would ensure that such haulers will use appropriate means of disposal. The City of Portland intends to address this problem through current development of franchise agreements. Their method of addressing the problem of "handyman" haulers may serve as a model for the rest of the region.

- As a task in the 1992/1993 waste reduction annual work program, require local building/demolition contractors to specify on local permits where their waste will be managed.
- Work with haulers, recyclers and solid waste industry to develop a promotion and education program which addresses illegal dumping issues including enforcement programs and options available for proper disposal and recycling.
- Work with neighborhood associations, citizen groups, haulers and recyclers in carrying out local community clean up events if demonstrated to be a viable local option by local governments in addressing illegal dumping problems.

■ *DEQ*

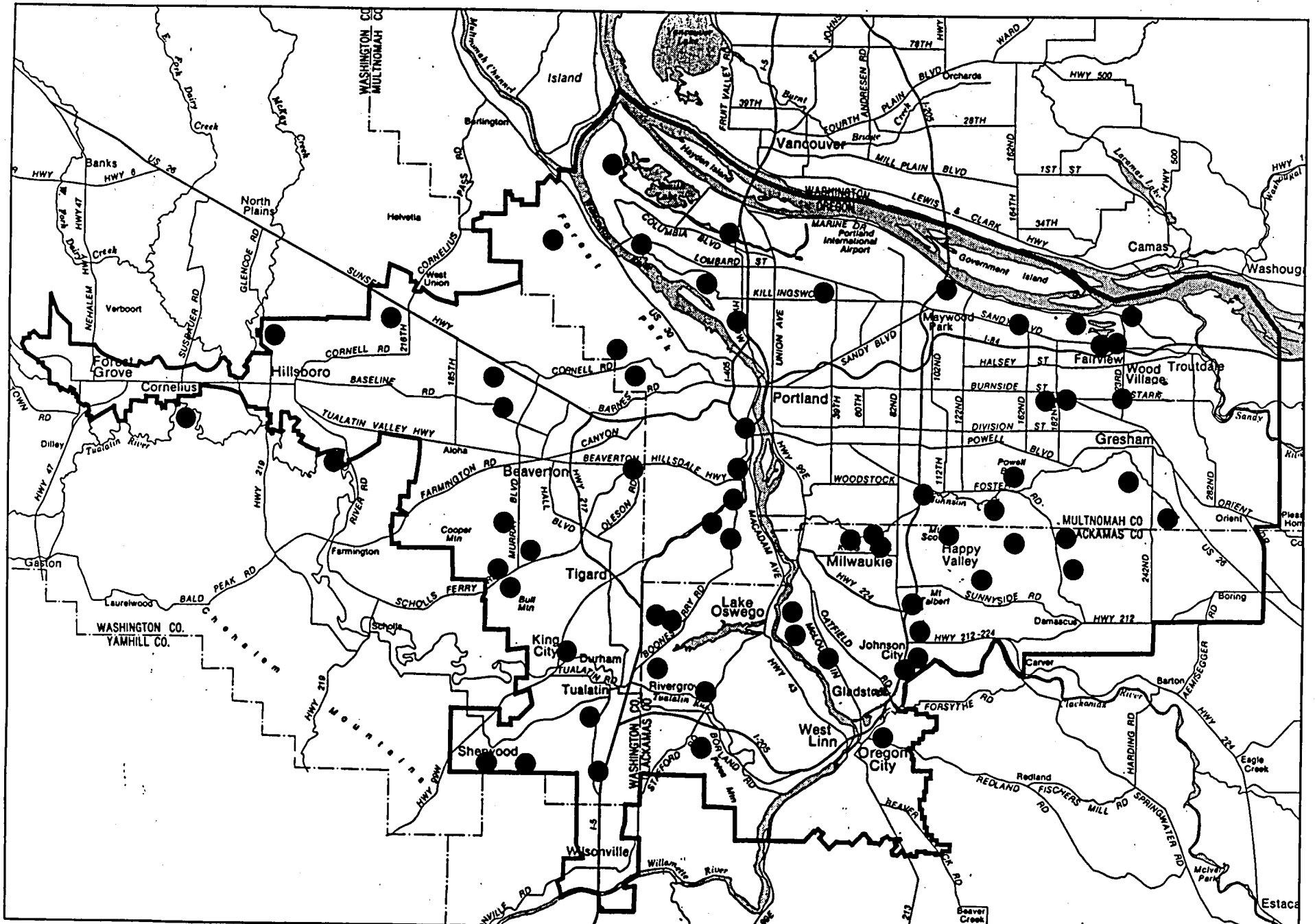
DEQ can affect illegal dumping through existing programs, such as the Waste Tire Program. This program can be expanded to provide funding and assistance with community cleanup efforts for a what constitutes a major factor of the illegal dumping issue. DEQ will continue to develop legislative measures to deal with tires and illegal dumping issues.

⁶An itinerant merchant is typically an unlicensed travelling salesperson. Handyman haulers would be classified as itinerant merchants.

ILLEGAL DUMPING APPENDIX
TO THE
REGIONAL SOLID WASTE MANAGEMENT PLAN

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September 1991



METRO

Illegal Dump Sites

1988 - 1991

2000 S.W. First Ave., Portland, OR 97201-5398, (503) 221-1646, 1" = 4 mi., 7-87-01

B: LOCAL GOVERNMENT PROGRAMS (1991)

Illegal Dumping in the Metro Area: 1991 Approaches to the Issue

Incidents of illegal dumping are currently handled by a variety of state and local government agencies. The Oregon Department of Transportation is responsible for dump sites that occur on roadsides under its jurisdiction. The Port of Portland is responsible for sites that occur on industrial land owned by the agency. All local governments in the region may prosecute illegal dumpers under ORS 164.785 or 164.805. Below is a description of the problem as it affects major divisions of local government in the Portland metropolitan area.

Clackamas County

Clackamas County has an ongoing program to control illegal dumping. County Solid Waste staff report that most illegal dumping occurs on roadsides and dead-end streets. Improved, but not heavily travelled roads in the County's urban area have shown the highest incidence of illegal dumping.

Illegal dumping in the form of unauthorized use of commercial dumpsters at shopping malls has also become evident, primarily on McLoughlin Boulevard.

Clackamas County provides a cleanup crew for dumping which occurs on county-owned property. Enforcement mechanisms are not typically available unless the perpetrator is either caught in the act or identified by an eyewitness. Clackamas County, like other local governments in the region, may choose to prosecute offenders under ORS 164.805 or 164.785 (Placing offensive substances in waters, on highways or other property). Violations under ORS 164.785 constitute a Class A misdemeanor: the convicted illegal dumper may be levied a penalty of up to \$2,500 and one year in jail.

A specific enforcement tool available to Clackamas County is to threaten impoundment of vehicles of persons identified as illegal dumpers. The vehicle would be held to cover the cost of cleanup.

Washington County

Washington County staff report that they have not seen an increase in illegal dumping on public lands although problems continue to exist at specific sites around the County. Disposal costs for the fraction of illegally dumped refuse requiring disposal in a general purpose landfill were an estimated \$6,500 in 1990. A particular problem is seen with individuals who use their own property to illegally dispose their garbage.

The County Health Department enforces a nuisance code which holds property owners responsible for removal of accumulations of refuse or

debris. This is the case even if the property owner was not the perpetrator. If a property owner does not clean up an identified site, a citation is issued. A maximum penalty of \$500 per day of violation can be levied against the property owner. If there has been a prior conviction of a violation of the nuisance code within two years, the penalty increases to a maximum of \$1000 per day of the current violation. Failure to appear at a court hearing or falsifying information related to the violation is cause for additional fines or imprisonment.

Persons caught illegally dumping can be prosecuted under ORS 164.785. Violations, when reported, are typically referred to the County Sheriff's Department. Presently, most violations are unreported and cleanup is left to the property owner.

Multnomah County

There has been a chronic problem with illegal dumping at access turnouts along the Sandy River Highway, at the eastern edge of the Metro boundary. In March 1989, an accumulated six tons of illegally disposed refuse which included household garbage, white goods and animal carcasses cost Multnomah County approximately \$8000 to clean up. The County has had some degree of success in containing the problem by installing barricades at the sites.

If an illegal dumper is apprehended and convicted in Multnomah County, they are subject to a \$500 fine for offensive littering under ORS 164.805, as well as a \$500 civil fine for illegal accumulation of solid waste.

County nuisance control staff suggested that additional reports of illegal dumping incidents in the Columbia Gorge National Scenic Area are possibly being channeled to the Forest Service or to Mt. Hood National Forest. In 1990, enforcement personnel at Mt. Hood National Forest reported more than 775 incidents of illegal dumping in the ranger districts on the urban fringe. The majority of incidents occur on the Larch Mountain road, the Columbia River Scenic Highway and in the Bull Run vicinity. Illegal use of Park dumpsters for household refuse was also reported. In addition, personnel at the National Forest reported the existence of two major illegal tire piles, one with 3,000 and one with 10,000 tires. The National Forest has litter and sanitation regulations that enable them to require the convicted perpetrator to clean the site or pay the cost of cleaning the site.

City of Portland

Illegal dumping in the City of Portland appears to occur most frequently on vacant property in low-income areas. Portland nuisance control staff report that there has been a marked increase in dumping near abandoned buildings in residential areas.

The City holds property owners responsible for cleanup of illegally dumped refuse. If property owners do not comply with a cleanup order within 15 days, the City contracts for cleanup and levies a fine of \$200 in addition to the cost of cleanup plus 26 percent overhead. The City levies additional penalties for repeat complaints.

Metro Region Context: *Summary*

Illegal dumping issues in the Metro region affect area local governments in two major respects: 1) cost and personnel required to enforce existing regulations, and 2) cost and personnel required to clean up illegal dump sites. Added to these factors is the administrative cost of processing notices and prosecuting identified violators.

C: ANALYSIS OF COST OF ILLEGAL DUMPING

Background Data on Illegal Dumping Costs

The following is background information on costs incurred by local governments for responding to problems associated with illegal dumping. The information and data address the following four issues related to illegal dumping:

- Costs associated with cleaning up illegal dump sites;
- Costs associated with enforcing laws and ordinances prohibiting illegal dumping;
- The number of illegal dumping cases prosecuted and the costs associated with prosecution; and
- The number of illegal dumping cases successfully prosecuted and the fines recovered through prosecution.

Data and information was gathered from Multnomah County, Washington County, Clackamas County, the City of Portland Bureaus of Buildings, Environmental Services and Parks, the Port of Portland, the Oregon Department of Transportation (ODOT) and Stop Oregon Litter and Vandalism (SOLV), a non-profit organization. With the exception of SOLV, no jurisdiction or agency contacted had detailed specific data about their illegal dumping cleanup and enforcement programs. However, in most cases they were able to provide cost estimates for their activities related to illegal dumping.

In summary, the numerical data and information regarding enforcement that was made available demonstrates that known costs associated with illegal dumping are not significantly great, though they are high in relation to the actual volume of material collected. Costs associated with enforcement are minimal because enforcement actions are also minimal, and there is therefore virtually no history of prosecution.

Reasons for this limited amount of activity include the following:

- Individuals and departments responsible for managing illegal dumping within each jurisdiction, from collection to enforcement and prosecution, also have other responsibilities that require larger percentages of their time and budgets. These other responsibilities include building inspections and code enforcement, road maintenance and construction and basic law enforcement.
- Illegal dumping has historically been a criminal offense in Oregon and, for this reason, rules of evidence apply. Illegal dumping cases require an eyewitness to the actual event, which is nearly impossible to obtain. Therefore, successful prosecution of offenders has not occurred.

- Illegal dumping cases are not considered a priority by the court system due to the difficulty in obtaining evidence and the comparative minor damage caused in relation to other types of crimes being tried.

Costs Associated with Illegal Dump-Site Cleanup

Generally, the cost associated with the cleanup of illegal dump sites is small when compared to budgets for other activities. However, the cost is high in relation to the actual volume of material recovered. Costs are incurred for labor, equipment to pick up and haul away collected materials and disposal. Agencies and jurisdictions contacted stated that only a small percentage of the total illegal dump sites in their jurisdictions had been identified and were being cleaned up. It was uniformly stated that resources were not available to undertake such a task.

■ County Programs

Due to the high cost of cleanup and the resources available, the three counties in the region clean up sites on county property or rights of way only. The costs and responsibility for the cleanup of illegal dump sites on private property within the three counties rest with the property owner. Jurisdictions and agencies administer different types cleanup programs depending upon the problems they face and the resources available to them. The following examples illustrate this point.

Clackamas County, who had the most detailed information available, operates a cleanup program targeted specifically at illegal dump sites on County property and rights of way. The program is complaint-driven. Labor consists mostly of County road crews and, when possible, they are assisted by County corrections crews. The annual costs of cleanup, including disposal, for Clackamas County are:

Fiscal Year	Annual Cleanup Cost	Sites	Tires	Total Tons
1988	\$14,091	101	N/A	N/A
1989	\$13,681	152	224	26.49
1990	\$10,739	102	375	20.71
1991 (to date)	\$12,000	85	301	17.88

Washington County also operates a program geared specifically to cleaning up illegal dump sites. However, costs are significantly lower compared to Clackamas County because the program relies heavily on the use of community corrections crews for labor. Costs for the program have remained steady over the last four years. Program

administration is approximately \$3,000 annually and additional annual disposal costs range from \$3,000 to \$5,000. No accurate figures related to volumes collected were available, however, it is estimated to be between 50 and 75 tons annually, based on average tip-fees and haul costs.

Fiscal Year	Annual Cleanup Cost	Total Tons
1990	\$2,000 to 5,000	50 to 75
1991 (to date)	2,000 to 5,000	50 to 75

Multnomah County operates a litter cleanup program which includes the cleanup of illegal dump sites. Cleanup activities are part of the annual work program of the road department. Illegal dump sites and litter are cleaned as they are discovered and as time allows. The County does not have a separate accounting system for costs associated with litter cleanup and illegal dump site cleanup. The costs associated with program administration and actual cleanup and disposal are also not easily separated. Total program costs are as follows:

Fiscal Year	Annual Cleanup Cost
1988	\$28,000
1989	44,678
1990	47,511
1991 (to date)	N/A

■ City of Portland

Within the City of Portland, illegal dumping is a violation of the City's nuisance ordinance. Therefore, cleanup of illegal dump sites is the responsibility of the nuisance abatement department of the Bureau of Buildings. The City contracts with a private vendor to clean up dump sites on private and public property throughout the City.

The following are the City's actual clean-up costs of illegal dump sites for fiscal years 1988-89 through 1990-91. The costs include the contractor's labor, operational and disposal costs.

Fiscal Year	Dollar Amount	Number of Sites
1988-89	\$82,836	525
1989-90	\$136,267	755
1990-91	\$155,954	731

The Bureau of Buildings is also responsible for inspection and enforcement of the City's nuisance law. With regard to illegal dumping, enforcement takes the form of trying to get those responsible for dumping material to clean up and properly dispose of illegally dumped material. For fiscal year 1991-92 the Bureau is budgeted to expend \$450,000 for inspection and enforcement of the illegal dumping portion of the City's nuisance ordinance. The expenditure is the equivalent of 7.5 full-time enforcement officers.

Portland Parks Bureau

The Portland Parks Bureau also experiences a high level of illegal dumping on its property including illegal use of dumpsters and other trash containers. Bureau has responsibility for several heavily wooded parks, such as Forest Park, which are targets for illegal dumping. The costs of illegal dumping to the Parks Bureau were approximately \$61,000 for 1990.

■ Port of Portland

The Port owns large tracts of industrial park land throughout the region, including the Rivergate industrial area. Due to the isolated location of many of the Port's holdings, a problem with illegal dumping developed. The Port feels that the problem was exacerbated by the close proximity of the Rivergate industrial area to the St. Johns Landfill. By 1988, the cost to the Port for cleanup was approximately \$12,500 per year. Since 1989, costs have dropped sharply to approximately \$3,000 annually as the result of an aggressive program to identify those responsible for illegally dumping solid waste on Port property and encourage them to clean it up. The Port reports that it is experiencing up to 90 percent compliance with their program.

■ Oregon Department of Transportation (ODOT)

As a part of their regular highway maintenance responsibilities within the region, ODOT must remove litter and illegally dumped material along highways. It is estimated that 15 percent the annual cleanup budget goes to clean up illegal dump sites. The Department's largest problem with illegal dumping is caused by transient camps under

highway bridges and overpasses. The total annual costs are summarized below:

Fiscal Year	Annual Cleanup Cost
1988	\$63,085
1989	58,659
1990	46,087
1991 (to date)	N/A

■ Stop Oregon Litter and Vandalism (SOLV)

SOLV was responsible for organizing the April 1991 half-day cleanup event in the metro area that included the cleanup of nine illegal dump sites. At the half-day event, 124 tons of mixed waste and 4,300 waste tires were collected and disposed. The total cost for this effort was \$59,000. These costs included approximately \$10,000 for disposal costs in addition to administrative and promotional costs for the cleanup event. All labor was donated by citizen and waste management industry volunteer efforts. Local haulers also volunteered time and equipment. Without the assistance of volunteers, costs would have been much hire.

The inaugural cleanup event was in 1990. Costs for the event were similar to the 1991 event but the amount of waste collected was lower: 36 tons of mixed waste and 2,500 waste tires. The reason for the higher costs in relation to volume of waste collected was attributed to the fact that it was the first attempt at organizing an event of this scale. Additional promotion was needed and organizational and administrative costs were also higher.

Costs Associated with Code Enforcement:

Different departments within local jurisdictions are responsible for enforcement of illegal dumping laws. Therefore, the methods and costs associated with enforcement vary significantly. Generally, costs associated with enforcement are low because other responsibilities demand the time and resources of the enforcing department. The following is a summary of the methods and associated costs of enforcement within the region.

■ County Programs

Clackamas County addresses illegal dumping through its solid waste ordinance and enforces illegal dumping cases through the Department of Transportation and Development. The enforcement procedure involves notifying those suspected of being responsible for illegally dumping waste that they should remove the waste they dumped. Identification

is through evidence found in illegally dumped waste, usually address labels. Enforcement actions and prosecution are not common due to the difficulty in eyewitness identification of responsible parties. Total annual enforcement costs average approximately \$2,500.

In Washington County code enforcement is shared by the Sheriff's Department and the Department of Health and Human Services. Illegal dumping enforcement within the Sheriff's Department is limited to acts of illegal dumping or littering actually witnessed by an individual or officer. In 1990 and 1991 only forty-one total arrests or citations were issued. Of these, twenty-one were for littering. Of the twenty illegal dumping cases, nineteen were misdemeanors where a citation was issued. A single case was prosecuted as a felony case. However, this was a unique case where several other charges were involved.

The Health and Human Service Department is responsible for enforcing the County's nuisance ordinance which addresses illegal dumping on private property. The ordinance makes property owners responsible for clean up regardless of whether or not they were responsible for the act of illegal dumping. Enforcement is complaint driven and written complaints are required. Over the last year, the County has received approximately ninety nuisance complaints. Of these, approximately thirty have been for illegal dumping. Enforcement procedures within the Department include a notice and order to property owners to clean up a site. If the site is not properly cleaned up a citation is written. Most of the sites are cleaned up by the property owner without the need for a citation. The Department estimates it spends approximately \$6,000 annually in personnel costs to investigate illegal dumping cases.

Multnomah County relies on their Sheriff's Department to enforce illegal dumping ordinances. Due to more urgent law enforcement responsibilities, illegal dumping is not a priority in the department. This is exhibited by the fact that only two citations were issued for illegal dumping over the last four years in the County. Another fourteen cases included littering or illegal dumping as an offense in the accompanying arrest reports. However, littering or illegal dumping was not the primary infraction that resulted in the arrest. The costs associated with enforcing illegal dumping ordinances in the County were so small that they could not be estimated.

■ City of Portland

The City runs a full service nuisance abatement program that includes addressing illegal dumping as one of their tasks. They have eleven full-time enforcement officers within the Bureau of Buildings that enforce the nuisance ordinance. Annual budget figures for these personnel along with an assessment of how much of their time is spent on illegal dumping cases was requested from the City but is not yet available.

Information Related to the Prosecution of Cases

Illegal dumping may be a criminal violation of ORS 164.785 or 164.805, or a violation of local nuisance codes. Rules of evidence for illegal dumping require an eyewitness account of the actual event. This type of evidence is extremely difficult to get. Therefore, none of the jurisdictions contacted could cite any cases that were actually prosecuted. In the case of Multnomah County where sixteen arrests or citations over the last four years included charges for littering or illegal dumping, the charges were dropped in all but one case. In the single case that was pursued, it was done so through traffic court. No fine was levied or collected because it was determined illegal dumping was not a traffic violation.

Summary

The costs of illegal dumping are difficult to estimate, since most agencies have not made a concerted effort to isolate and monitor those costs previous to this analysis. It may be assumed that the costs represented in the analysis are only a fraction of the total costs. Representatives from state and local agencies contacted uniformly agreed on three points:

1. it appears that dumping increases commensurately with increases in the cost of disposal;
2. if the costs were tracked more carefully, and if there were more active patrols and more violations reported, the true reported costs of providing enforcement, cleaning up sites, and prosecuting violations would be much higher than those represented in this analysis; and
3. under the existing system, illegal dumping is not a priority because of limited resources.

D: PROGRAM ANALYSIS

Analysis of regional issues

Analysis of illegal dumping issues in the Portland metropolitan area yielded a list of specific types of *sites* where illegal dumping occurs, types of *materials* dumped, and *affected parties*.

■ Enforcement

Enforcement of state and local regulations that address illegal dumping has been difficult at best due to three factors: stringent evidentiary requirements for criminal violations, inadequate allocation of enforcement personnel due to local budgetary constraints, and overburdened courts resulting in a low number of illegal dumping cases actually heard.

For violations that are classified as criminal, judges typically require eyewitness evidence for conviction in criminal cases. Civil violations do not require the same level of proof. Given that most illegal dumping occurs in remote areas, eyewitness evidence is unlikely. Designation of enforcement personnel and their level of empowerment may vary from jurisdiction to jurisdiction. Since most courts are overburdened with cases involving more serious crimes, it is not surprising that most judges consider illegal dumping violations to be a trivial offense and therefore a very low priority; penalties often reflect this attitude.

Notifying perpetrators of illegal dumping violations appears to be an effective enforcement mechanism. The Oregon Department of Transportation, Port of Portland, and Clackamas County all use form letters that are delivered to persons whose names are found on items within illegally dumped materials. When suspected violators are notified and informed of potential penalties if convicted, they may be easily persuaded to clean up the illegally dumped waste.

Provisions of House Bill 3361 will allow for enhanced enforcement of illegal dumping by using the option of civil penalties rather than criminal penalties.

■ Vacant lots (Residential)

Illegal disposal in low-income residential areas and other vacant properties in urban, suburban and rural areas is a major issue.

Dumping in vacant residential lots appears to be a problem primarily in three areas: low-income residential areas with a large number of vacant houses, mixed urban residential areas with large wooded lots and sparsely populated areas on the urban

fringe. Primary motivation for illegal disposal in these areas is the inability or unwillingness to pay the cost of disposal.

Availability of solid waste collection service, and the opportunity to recycle, are required by Oregon Revised Statutes (ORS). The statutes allow local governments to establish the character and frequency of service. If adequate collection and recycling service is not available on a regular basis, or if availability and time of pickup is not well understood, generators of solid waste may not be inclined to use conventional services. The alternative is to save waste until there is a sufficient quantity to haul to a disposal facility --- or to dispose illegally. If collection services are not used (use of collection service is voluntary, not mandatory), it is important that self-haul options are well understood.

When an area appears to be unkempt due to litter and illegal dumping it invites further activity. Individuals who dump in low-income areas are not necessarily residents of low-income neighborhoods, but they may be unlicensed "handyman" haulers or people from other areas who see low-income neighborhoods as an opportunity to dump illegally. Lack of education and a general sense of disenfranchisement from public agencies may play a role.

■ Open Areas (Public)

This category includes illegal disposal in parks, playgrounds and natural areas.

Open public areas offer ample opportunity to dispose bulky wastes for both visitors and persons who live near these areas.

Persons living adjacent to open areas have traditionally enjoyed the freedom to accumulate refuse on their property. It is known that when a refuse pile is visible it invites further dumping in the vicinity.

■ Roadsides

Illegal disposal on roadsides includes: (1) refuse on roadsides as a result of solid waste and recycling activities; and (2) litter and other illegally disposed refuse found on roadsides.

Citizens who self-haul solid waste or any other type of load may not own adequate equipment for the purpose. Transient camps in highway rights-of-way present an additional problem.

If a load is inadvertently scattered or lost, it may be both inconvenient and hazardous to retrieve.

Dumping and/or scattering of loads by both private and commercial vehicles is usually the result of carelessness or lack of

understanding of consequences. Oregon Department of Transportation (ODOT) reports that isolated incidents of deliberate scattering occur.

■ Open Areas (Commercial and Industrial)

This category includes illegal disposal in open areas that are located in or near sites of industrial or commercial activity. Analysis was mainly focused on commercial and industrial areas that are in the vicinity of solid waste and recycling facilities.

Deliberate illegal disposal in commercial and industrial open areas may be the result of inability to pay the cost of conventional disposal.

Some commercial or industrial open areas may not be well kept. This invites illegal dumpers to add seemingly insignificant amounts to what appears to be an existing dump.

■ Bulky Materials (Furniture, Appliances, Autos)

Furniture, appliances, tires and other large bulky items that are abandoned or otherwise illegally disposed comprise this category. These items constitute a significant amount of illegal dumping in the Portland metropolitan area.

These materials can be costly to dispose, especially if special pick up is required. The alternative of casting off bulky materials at illegal dump sites may seem an inexpensive solution to illegal disposers.

Disposing of bulky materials may occur if adequate garbage service is not available. This may be especially true in rural areas.

Some illegal disposers travel great distances and expend much effort to dispose of bulky items that could possibly be recycled or sold.

■ Construction and Demolition Debris (C&D)

Included in this category is debris from construction, demolition and land clearing that is illegally disposed. This aspect of illegal dumping was analyzed in the context of management practices identified in Chapter 3, Special Waste.

Illegal disposal of C&D materials is usually perpetrated by private individuals and disreputable contractors who do not wish to incur the costs of disposing unusable or unwanted materials from small construction and/or demolition projects.

Disposal of C&D material is not always convenient. Material must either be hauled or picked up from the site by a haulers or

recyclers. Currently, there are haulers and recyclers who specialize in serving construction and demolition sites. A problem lies in the fact that the sites may be within a franchised collection area. Franchised garbage collectors are granted the exclusive right by cities or counties to haul waste within defined collection areas. Allowing non-franchised haulers to haul C&D debris within a franchised collection area may result in a violation of the collection franchise agreement.

Illegal disposal of C&D materials is perpetrated by individuals involved in home improvement projects as well as construction and demolition contractors.

■ **Mixed Solid Waste in Inert Fills**

This category includes municipal solid waste mixed with material designated as clean fill and deposited at inert fill sites.

In addition to major disposal sites like Lakeside Reclamation Landfill, there are many small, effectively unregulated inert fills in the metropolitan area that accept material for no charge. When putrescible solid waste is mixed with desired material (dirt, rocks, concrete) odor and leaching problems arise.

Mixing putrescible waste with fill material may be the result of unintentional contamination or a deliberate act to conveniently dispose waste that is not approved for inert fills.

■ **Non-Profit Charitable Organizations**

Illegal disposal of refuse and abandonment of useless articles at charity recyclers creates an economic burden for non-profit benevolent organizations. Although this issue was identified as significant, it was not subjected to analysis for the development of the Illegal Dumping Chapter. Instead, Metro has undertaken an effort to provide recycling credits towards the cost of disposal, an approach that recognizes the amount of material these organizations reuse and recycle in comparison to the amount of material that cannot be processed.

■ **Illegal Use of Dumpsters**

Illegal use of dumpsters in parks and at commercial and industrial areas places an economic burden on those responsible for maintenance. In effect, the operators of these sites subsidize the portion of the population choosing to dispose of their garbage illegally.

Many individuals dispose household waste in dumpsters located in shopping malls and other commercial districts. Illegal disposers of this sort typically do not choose to have residential collection service.

■ Waste Tires

Waste tires represent a significant solid waste problem. Approximately two million tires are discarded in Oregon each year. A significant portion of discarded waste tires is reclaimed, mostly for fuel. Many of those that are not reclaimed are illegally disposed.

In 1991, cost of pickup for waste tires ranged from \$3 to \$5 each. If an individual chooses to self-haul to a transfer or disposal facility, the cost is \$1 per tire or \$3 per tire on the rim. Truck tires are more costly to dispose. In the absence of a tire deposit or other incentive to recycle waste tires, individuals may choose to stockpile tires.

Refuse collectors are reluctant to pick up waste tires since they are legally restricted to carrying fewer than nine tires without obtaining a permit.

When individuals purchase new tires, there is an inclination to keep their old tires rather than giving them to a tire dealer.

■ Untarped Loads at Solid Waste Facilities

Uncovered loads arriving at transfer and recycling facilities result in a significant amount of litter that is blown off the open vehicles. This is a problem with both commercial waste haulers and individual who choose to self-haul. In 1991, Metro adapted its policy to address untarped loads. Both commercial and public users of Metro facilities are levied a surcharge in addition to the regular tip fee if loads are not appropriately covered.

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 91-422B, FOR THE PURPOSE OF AMENDING THE METRO CODE TO CLARIFY AND SUPPLEMENT EXISTING PROVISIONS RELATED TO THE MANAGEMENT OF PETROLEUM CONTAMINATED SOILS, AND DECLARING AN EMERGENCY

Date: October 3, 1991

Presented by: Councilor Wyers

Committee Recommendation: At the October 1 meeting, the committee voted unanimously to recommend Council adoption of Ordinance No. 91-422B. Voting in favor: Councilors Gardner, McFarland, and Wyers.

Committee Issues/Discussion: Petroleum contaminated soils (PCS) are soils into which gasoline, diesel fuel, bunker oil or other petroleum products have been introduced. The most common source of PCS is found when leaking underground storage tanks are removed. New federal requirements for the inspection and removal of such tanks has significantly increased the number of sites and the amount of PCS that is generated. The number of sites in the Metro region increased from 131 in 1988 to 529 in 1990, with a similar or even higher number expected in 1991. It is anticipated that the amount of generated PCS will continue to increase through 1993, when initial inspections of all underground tanks must be completed.

Currently there are two commonly used methods for disposing of PCS, landfilling and ventilation or aeration. Landfilling occurs at the Hillsboro Landfill under permission of the state Department of Environmental Quality. In 1990, a total of 60,000 tons of PCS were disposed of at Hillsboro, and the amount is expected to double in 1991.

Ventilation or aeration involves spreading out the PCS and allowing the contaminants to evaporate. This process can take place either at the original site of the PCS or the PCS is removed to another site. Concern has been expressed that these activities may result in new soil contamination because Oregon's high rainfall levels may carry the contaminants into the soil before they can evaporate. In addition, others have noted that harmful substances contained in the petroleum products, such as benzene, may be released into the atmosphere.

New Disposal Technologies

New processing technologies that destroy or contain and reuse PCS contaminants are now being introduced in the Metro region. These technologies allow the contaminated soil to be reused and eliminate the potential of harmful air emissions. These processes generally use heat to burn off the contaminants.

Three companies, RMAC, Oregon Hydrocarbons and the Sonas Companies are in the process of obtaining sites and various regulatory permits to build processing facilities using these new technologies. It is anticipated that all of these facilities will be in operation by March 1992. RMAC will be located near Troutdale and Oregon Hydrocarbons and Sonas in North Portland. The facilities will have a total annual capacity of 200,000 tons of PCS.

The Regional Solid Waste Management Plan (RSWMP) identifies PCS as a special waste and calls upon Metro to provide adequate disposal capacity. In addition, Metro solid waste staff has been working with DEQ in the development of new state guidelines and procedures. It is anticipated that these procedures will establish processing the preferred method of PCS disposal, followed by ventilation and then landfilling.

The solid waste staff contends that the proposed ordinance will establish the processing of PCS as the preferred disposal method within the Metro region and provide for regulation of those developing facilities that will use new processing technologies. The department notes that the ordinance meets the RSWMP criteria, provides for environmentally sound disposal and preserves increasingly scarce landfill space.

Ordinance Provisions

The proposed ordinance addressing the following areas: 1) defining when PCS becomes solid waste and thus subject to Metro regulation, 2) timelines for the use of various disposal and processing alternatives, 3) a regulatory scheme for facilities using new processing technologies, 4) conforming and technical amendments to the franchise chapter of the Metro Code and 5) an exemption from Metro user fees for PCS processing facilities.

The ordinance provides that PCS will be considered solid waste and subject to Metro regulation when it leaves its site of origin. If PCS is processed or ventilated at the site of origin and returned to the same location it would not be regulated by Metro, but would be subject to various types of regulation by DEQ.

The ordinance would permit PCS to be ventilated at off-site locations until December 31, 1991. Beginning January 1, 1992, PCS removed from the site of origin would have to be disposed of at a landfill with a geomembrane liner (Hillsboro) or a Metro-licensed processing facility. In addition, the ordinance would provide that, effective on a date of adoption, PCS generated within Metro boundaries could not be disposed of in a non-designated facility without a non-system license from Metro.

The ordinance provides that off-site PCS processing facilities must obtain a Metro license. According to the staff report, the license would "subject the processor to minimal Metro regulation." A license application would be reviewed and approved or denied by the Executive Officer or their designee. The application must be

approved within 120 days, or it would be considered denied. License denials would be subject to appeal to the Metro Council.

Applicants would be subject to the following licensing criteria:

- 1) whether the proposed facility is consistent with RSWMP,
- 2) whether the proposed facility is needed, based on the types of existing facilities and considering the hierarchy of preferred processing methods established by state law and RSWMP,
- 3) whether the applicant has obtained necessary land use authority and permits for operation of the facility,
- 4) whether the applicant can obtain the required insurance coverages, and
- 5) whether the applicant is willing to comply with all license conditions.

Conditions to which a licensee would be subject include:

- 1) providing adequate and reliable service to persons using the facility,
- 2) providing immediate notice of any change in ownership; any receivership, conservatorship or bankruptcy proceeding affecting the facility; or the temporary or permanent cessation of operations,
- 3) establishing procedures to insure that hazardous or otherwise unacceptable material does not enter the facility,
- 4) regularly reporting certain information to Metro, including the amount and type of material entering the facility, amount and type of material rejected, and the destination of processed material leaving the facility,
- 5) maintaining required liability insurance coverage,
- 6) complying with applicable governmental laws and regulations relating to operation of the facility,
- 7) holding Metro harmless relating to the licensee's performance or failure to perform under the license issued,
- 8) paying all Metro fees and charges,
- 9) complying with other conditions specified in the license to protect the public health, safety and welfare.

The licensing requirements and conditions would be added to the franchise chapter of the Metro Code, necessitating a large number

of technical and conforming amendments. In addition, the general counsel's office proposed two changes to conform the franchise chapter with other Metro Code provisions. These include, on page 3, the definition of solid waste would be amended to include manure, vegetable or animal solid or semi-solid wastes, dead animals, and infectious waste as defined in ORS 459.387. On page 7 the minimum requirement for public liability coverage insurance for all franchisees and licensees would be increased to \$500,000.

The ordinance also provides that Metro would not assess user fees at the licensed PCS processing facilities, but would continue to assess such fees when PCS is disposed of at a landfill. The intent would be to provide an economic incentive to use a processing facility.

Alternative Ordinances

Ordinance No 91-422 provides a "licensing" regulatory scheme for petroleum contaminated soil (PCS) processing facilities under the Metro Franchise Code (Section 5.01). The Office of General Counsel prepared two alternative versions of Ordinance No. 91-422 for committee consideration. The first alternative (Ordinance No. 91-422A) would provide for Council approval of the licenses issued under the proposed ordinance. As originally proposed, the licenses would have been issued by the Executive Officer without Council review.

The following specific changes in the original ordinance were made to accomplish this purpose:

Page 11, Section 9 (a), the last sentence -- as amended, provides that the Executive Officer make recommendations to the Council concerning suspending, modifying, or revoking an existing license. The council would take action on the recommendation. This is the same process used for franchisees.

Page 12, Section 9 (b), --makes necessary changes to reflect that the Council would be responsible for taking action to suspend, modify or suspend a license.

Page 14, Section 10 (b), --amended to provide for initial Council approval of licenses.

Page 16, Section 10 (f), --amended to provide that Council action to approve a license must be completed within 120 days after a completed license application is received.

The second alternative (Ordinance No. 91-422B) requires that PCS facilities obtain a franchise under the franchise code. Applicants would be subject to all of the provisions of the franchise code and those specific conditions and requirements outlined in the original licensing proposal.

Committee Recommendation

The committee considered the proposed ordinance at two separate meetings. Extensive discussion centered on the two principal policy issues concerning the proposed ordinance: 1) the role of the Council in regulating these facilities, and 2) whether regulation should be through a franchise or through the licensing system proposed in the ordinance. The committee concluded that it was appropriate to regulate PCS facilities under the franchise code which would include Council approval of any franchise agreement. Therefore, the committee recommends that the Council adopt Resolution No. 91-422B.

Council Approval

The committee concluded that Council approval of PCS facilities is appropriate for the following reasons:

-- State law governing Metro and the Metro code clearly authorize the Council to regulate a broad spectrum of solid waste facilities, including processing facilities

-- Both the current franchise code and the proposed licensing process provide for discretion in issuing the franchise or license. Because such discretion is involved, review by a governing body would appear warranted and appropriate

-- Approval by a governing body would provide an additional safeguard that the all applicants have been fairly considered and that approved facilities have met all regulatory requirements, and

-- Review by the Council would permit discussion of several issues relating to regulation of PCS facilities, including acceptance of out-of-region material, potential loss of user fees, and the relationship between PCS facility regulation and overall regulation of the solid waste disposal

Franchising/Licensing

The question of whether PCS facilities should be franchised or licensed is complex. The committee concluded that at this time PCS should be regulated under the existing franchise code based on the following reasons:

-- The franchise code currently provides that the Council franchise a broad spectrum of solid waste facilities, including processing facilities

-- Similar-sized facilities are currently franchised

-- Franchise agreements could be structured to provide a reduced level of regulation as provided in the licensing ordinance

-- The licensing proposal provides no criteria or standards to justify why PCS facilities should be treated differently than other facilities that are franchised

-- The franchise code is scheduled to be rewritten during the current fiscal year. Procedures for licensing, contracting and other forms of regulation of solid waste facilities may be developed as part of the revision process. The committee believes that it would be unwise to institute a new form of regulation prior to this review which may result in the development of a more comprehensive approach to regulate all types of solid waste disposal facilities in the Metro region. The committee has directed staff to explore how it can expedite its review of the franchise code.




METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: September 23, 1991

To: John Houser, Council Analyst

From: Todd Sadlo, Senior Assistant Counsel 

Regarding: **SECOND ALTERNATE VERSION OF PROPOSED
ORDINANCE NO. 91-422**

Attached is a second alternate version of proposed Ordinance No. 91-422, labeled No. 91-422 B. Your memo of September 18, 1991, requested that I develop a revised draft "that would place PCS processing facilities directly under the franchise code." The attached draft provides that the owner or operator of a PCS processing facility must obtain a franchise, under the existing franchise Code.

You also requested that the revised draft apply the licensing provisions proposed for petroleum contaminated soils to "any franchised facility," and that the provisions of Section 10 be applied to "any franchise applicant." This was not done, because the majority of the provisions in question are variations of existing provisions in the franchise Code. To follow the approach suggested in your memo is to begin a major overhaul of the franchise Code. The Code needs an overhaul, but it cannot be done properly in the time frame given. Instead, I have deleted all PCS license provisions that duplicate or are variations of existing franchise provisions.

As requested, Section 16 of the original draft has been retained, and is now Section 6.

Please let me know if you have further questions regarding this matter or would like additional or different modifications.

1040

Attachment

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)
METRO CODE TO CLARIFY AND SUPPLE-)
MENT EXISTING PROVISIONS RELATED)
TO THE MANAGEMENT OF PETROLEUM)
CONTAMINATED SOILS, AND DECLARING)
AN EMERGENCY)

ORDINANCE NO. 91-422 B
Introduced by
Councilor Wyers

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" ~~has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "Person" has the same meaning as in Code Section 1.01.040.

~~(m) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.~~

~~(n)~~ (n) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(o)~~ (o) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(p)~~ (p) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(q)~~ (q) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

~~(q)~~ (r) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

~~(r)~~ (s) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

~~(s)~~ (t) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cess-pool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; provided that this definition but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005
466.005; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting or crops and the raising of fowls or animals; and or
- (4) Explosives.

~~(t)~~ (u) "Solid Waste Management Plan" means the Metro Regional Solid Waste Management Plan.

~~(u)~~ (v) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

~~(v)~~ (w) "User Fee" means a user fee established by the District under ORS 268.515.

~~(w)~~ (x) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.
- (5) Persons who process, transfer or dispose of solid wastes which:
 - (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
 - (B) Have been source separated;
 - (C) Are not and will not be mixed by type with other solid wastes; and
 - (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper~~

~~uncontaminated by food wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 3. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant can obtain public liability insurance, including automotive coverage,

in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law ~~for public contracts.~~

- (4) If the applicant is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) ~~A duplicate copy of the DEQ disposal site permit application~~ all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.
- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, the duration of that interest and shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant has received proper land use approval; and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 4. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at franchised facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code, user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, ~~is collected,~~ the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 5. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

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"5.01.230 Additional Provisions Relating to Issuance of a Franchise for a Facility Processing Petroleum Contaminated Soil:

(a) The requirements of this Chapter shall apply to the processing of Petroleum Contaminated Soil as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a franchise under this Chapter. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.
- (2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a franchise under this Chapter, and shall not be required to remit user fees to the District for soil so treated.
- (3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a franchise under this Chapter. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) In addition to any other conditions imposed under this Chapter, a franchisee of a petroleum contaminated soil facility shall be subject to the following conditions:

- (1) The franchisee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;
- (2) In addition to the information required to be submitted under Metro Code Section 5.01.130, the franchisee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:

(A) Amount and type of material processed at the facility;

(B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;

(C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

Section 6. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility franchised by Metro under Code Chapter 5.01 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility franchised by Metro under Code Chapter 5.01."

Section 7. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051-B

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE)
METRO CODE TO CLARIFY AND SUPPLE-)
MENT EXISTING PROVISIONS RELATED) ORDINANCE NO. 91-422 A
TO THE MANAGEMENT OF PETROLEUM)
CONTAMINATED SOILS, AND DECLARING)
AN EMERGENCY)

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) "Executive Officer" ~~has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

(l) "License" means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code.

~~(l)~~ (m) "Person" has the same meaning as in Code Section 1.01.040.

(n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.

~~(m)~~ (o) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (p) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(o)~~ (q) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (r) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap

paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(g) (s) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

(r) (c) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

(s) (u) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cess-pool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; provided that this definition but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005 466.005; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals; and or
- (4) Explosives.

(t) (v) "Solid Waste Management Plan" means the Metro Regional Solid Waste Management Plan.

(u) (w) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(v) (x) "User Fee" means a user fee established by the District under ORS 268.515.

(w) (y) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.020 is amended to read:

"5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities, or license certain facilities.

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish an exclusive franchise and licensing system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery."

Section 3. Metro Code Section 5.01.030 is amended to read:

"5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee, has obtained a license as specified in Section 5.01.230 or is exempted by Section 5.01.040 of this chapter.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise agreement or license.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee, licensed under Section 5.01.230 or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter."

Section 4. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are

such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
- (B) Have been source separated;
- (C) Are not and will not be mixed by type with other solid wastes; and
- (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 5. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise or license, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant for a franchise or license can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) If the applicant for a franchise or license is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) For an applicant for a franchise or license, a duplicate copy of the ~~DEQ disposal site permit~~

application all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.

- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, or licensee and the duration of that interest, and a franchisee shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant for a franchise or license has received proper land use approval, and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise or license application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 6. Metro Code Section 5.01.130 is amended to read:

"5.01.130 Administrative Procedures for Franchisees and Licensees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards

and State of Oregon may be used for weighing waste.

- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee or licensee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee or licensee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee or licensee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads, or by other characteristics as specified in the conditions for approval.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).
- (8) Signature and title of the franchisee, licensee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a

franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee or licensee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, ~~or his authorized agent in writing,~~ may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or, if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee or licensee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid."

Section 7. Metro Code Section 5.01.140 is amended to read:

"5.01.140 Franchise and License Fees:

(a) The Council shall establish an annual franchise fee which and license fees that it may revise at any time upon thirty (30) days written notice to each franchisee and/or licensee and an opportunity to be heard.

(b) The Franchise fee and license fees shall be in addition to any other fee, tax or charge imposed upon a franchisee or licensee.

(c) The A franchisee or licensee shall pay the franchise or license fee in the manner and at the time required by the District."

Section 8. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised or licensed by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at licensed facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code,

user fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account ~~is~~ thereafter collected, in whole or in part, ~~is collected,~~ the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 9. Metro Code Section 5.01.190 is amended to read:

"5.01.190 Enforcement of Franchise or License Provisions:
Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Executive Officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving the written notice thereof, the Executive Officer may make a recommendation to the Council that the franchise or license be suspended, modified or revoked.

(b) The Council may direct the Executive Officer to give the franchisee or licensee notice that the franchise or license is, or on a specified date shall be, suspended, modified or revoked. The notice authorized by this subsection shall be based upon the Council's finding that the franchisee or licensee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised or licensed site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised or licensed site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinance requires licensees or franchisees to comply with the Metro disposal franchise and license ordinance.

(c) Except as provided in subsection (d) of this section, the Council's revocation, modification or suspension of a franchise or license shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Executive Officer may, in accordance with Code Chapter 2.05, immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition, the case of a franchisee, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise or license is immediately suspended, the franchisee shall have

ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter."

Section 10. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

"5.01.230 Issuance of License for Facility Processing Petroleum Contaminated Soil:

(a) The licensing requirements of this section shall apply as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes petroleum contamination from the soil and either destroys or contains it, without first obtaining a license under this section. As used in this section, "bioremediation" means a process using

specially cultured microorganisms to decontaminate soil under controlled conditions.

(2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a license under this section, and shall not be required to remit user fees to the District for soil so treated.

(3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a license under this section. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) The Executive Officer shall review a complete application for a license to process petroleum contaminated soil and recommend to the Council approval of the application and conditions for approval, or denial. Following receipt of the Executive Officer's recommendation, the Council shall approve or deny the application. If approval is granted, the Council may modify or remove conditions recommended by the Executive Officer, or attach additional conditions. Council approval of an application shall be by ordinance, directing the Executive Officer to issue a license as specified.

(c) The following shall be the basis for approval or denial of an application submitted under this section:

(1) Whether the proposed facility is consistent with the Regional Solid Waste Management Plan;

(2) Whether the type of facility is needed or preferred, given the processing capabilities and methods of existing facilities, and in consideration of a hierarchy of preferred processing methods established under state law or the Regional Solid Waste Management Plan;

(3) Whether the applicant has obtained land use authority and all necessary permits for operation of the facility. In appropriate circumstances, the Executive Officer may participate in local, state or federal permitting, land use or other proceedings to facilitate coordination between approval authorities;

(4) Whether the applicant is capable of obtaining the minimum levels of insurance coverage required under this Code; and

(5) Whether the applicant is willing and able to comply with all required license conditions.

(d) A license issued under this section shall be subject to the following conditions. The licensee or its authorized representative shall sign a statement acknowledging that the licensee is bound by all conditions set forth in the license:

(1) The licensee shall provide adequate and reliable service to persons utilizing the facility;

(2) The licensee shall give immediate notice to the District if there is a change in ownership or management of the facility, if the facility is placed in receivership or conservatorship or listed as an asset in any bankruptcy proceeding, or if the facility has temporarily or permanently ceased operations;

(3) The licensee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;

(4) In addition to the information required to be submitted under Metro Code section 5.01.130, the licensee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:

(A) Amount and type of material processed at the facility;

(B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;

(C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other de-

scription that clearly identifies the destination, if no tax lot number is available.

- (5) The licensee shall maintain liability insurance for the term of the license at least to the level specified in Metro Code Section 5.01.060(3), and shall give immediate notice to the District of any pending or actual cancellation of insurance required under this section;
- (6) The licensee shall comply with all federal, state, regional and local law in operation of the facility, and with all regulations, conditions and orders of a governmental authority having jurisdiction over the facility;
- (7) The licensee shall indemnify the District, Council, Executive Officer, Director, and their employees and agents, and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the licensee's performance of or failure to perform any of its obligations under the license issued;
- (8) The licensee shall remit to the District all fees and charges specified in the Metro Code, even as fee schedules may be amended during the term of the license; and
- (9) The licensee shall comply with other conditions specified in the license, deemed by the Council to be reasonable and necessary to protect the public health, safety or welfare.

(e) The term of a license issued under this section shall be five years. An application to renew a license shall be processed in the same manner as an application for a new license.

(f) The Council shall approve or deny an application submitted under this section within 120 days of the date it is deemed to be complete, unless the applicant consents to an extension of the review period. The Executive Officer shall take reasonable steps to ensure that a recommendation to approve or deny the application is delivered to the Council with sufficient time to allow the Council to render a timely decision."

Section 11. Metro Code Section 5.03.010 is amended to read:

"5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise and license fees pursuant to Code Section 5.01.140."

Section 12. Metro Code Section 5.03.020 is amended to read:

"5.03.020 Franchise and License Application Fees: Each application for issuance of a solid waste disposal franchise or license shall include and be accompanied by a franchise or license application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise or license shall be considered without payment of said the application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section."

Section 13. Metro Code Section 5.03.030 is amended to read:

"5.03.030 Annual Franchise and License Fees:

(a) ~~Franchisees,~~ A person issued a solid waste disposal franchise or license, shall pay to the District an annual franchise or license fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise and license fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be ONE HUNDRED AND NO/100THS (\$100) DOLLARS per site for each franchised or licensed site that only receives waste from the franchisee or licensee or a company, partnership or corporation in which the franchisee or licensee has a financial interest.

(c) ~~Franchisees~~ A person who are ~~issued franchises~~ receives a franchise or license during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise or license is in effect. The franchisee or licensee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise and license fees shall not for any reason be refundable in whole or in part. Annual franchise and license fees shall be in addition to franchise and license application fees."

Section 14. Metro Code Section 5.03.040 is amended to read:

"5.03.040 Non-Payment of Franchise or License Fee:

(a) The issuance of any franchise or license shall not be effective unless and until the annual franchise or license fee has been paid for the calendar year for which the franchise or license is issued.

(b) Annual franchise and license fees are due and payable on January 1 of each year. Failure to remit said fee by said

date shall constitute all required fees in a timely manner is a violation of the Metro Code and of the franchise or license, and shall subject the franchisee or licensee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have."

Section 15. Metro Code Section 5.03.050 is amended to read:

"5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise or license shall include renewal and transfer of a franchise or license, ~~provided,~~ However, that no additional annual franchise or license fee shall be paid upon transfer or renewal when the annual franchise or license fee for the franchise or license being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective."

Section 16. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility licensed by Metro under Code Section 5.01.230 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility licensed by Metro under Code Section 5.01.230."

Section 17. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051-A

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING THE) ORDINANCE NO. 91-422
METRO CODE TO CLARIFY AND SUPPLE-)
MENT EXISTING PROVISIONS RELATED) Introduced by Rena Cusma,
TO THE MANAGEMENT OF PETROLEUM) Executive Officer
CONTAMINATED SOILS, AND DECLARING)
AN EMERGENCY)

WHEREAS, Petroleum contaminated soil removed from its site of origin is a solid waste subject to Metropolitan Service District regulatory authority under ORS 268.317; and

WHEREAS, The Regional Solid Waste Management Plan classifies contaminated soil as a "special waste," and states, in part, that "Solutions to special waste management shall be developed as a component of the Solid Waste Management Plan"; and

WHEREAS, It is necessary to amend the Metro Code to more clearly describe Metro's role in regulating disposal and processing of petroleum contaminated soils; and

WHEREAS, The Metro Code amendments described in this Ordinance are necessary to further the health, safety and welfare of District residents; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. Metro Code Section 5.01.010 is amended to read:

"5.01.010 Definitions: As used in this chapter, unless the context requires otherwise:

(a) "Certificate" means a written certificate issued by or a written agreement with the District dated prior to the effective date of this chapter.

(b) "Code" means the Code of the Metropolitan Service District.

(c) "Council" has the same meaning as in Code Section 1.01.040.

(d) "DEQ" means the Department of Environmental Quality of the State of Oregon.

(e) "Disposal Site" means the land and facilities used for the disposal of solid wastes whether or not open to the public, but does not include transfer stations or processing facilities.

(f) "District" has the same meaning as in Code Section 1.01.040.

(g) "Exclusive Franchise" means a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographical area or in some specified manner.

(h) ~~"Executive Officer" has the same meaning as in Code Section 1.01.040~~ means the Executive Officer of the Metropolitan Service District or the Executive Officer's designee.

(i) "Franchise" means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility.

(j) "Franchisee" means the person to whom a franchise is granted by the District under this chapter.

(k) "Franchise Fee" means the fee charged by the District to the franchisee for the administration of the Franchise.

~~(l) "License" means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code.~~

~~(l)~~ (m) "Person" has the same meaning as in Code Section 1.01.040.

~~(n) "Petroleum Contaminated Soil" means soil into which hydrocarbons, including gasoline, diesel fuel, bunker oil or other petroleum products have been released. Soil that is contaminated with petroleum products but also contaminated with a hazardous waste as defined in ORS 466.005, or a radioactive waste as defined in ORS 469.300 is not included in the term.~~

~~(m)~~ (o) "Process" or "Processed" means a method or system of altering the form, condition or content of solid wastes, including but not limited to composting, shredding, milling, or pulverizing, but excluding compaction.

~~(n)~~ (p) "Processing Facility" means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system, hospital incinerations, crematoriums, paper shredders in commercial establishments, or equipment used by a recycling drop center.

~~(e)~~ (q) "Rate" means the amount approved by the District and charged by the franchisee, excluding the User Fee and Franchise Fee.

~~(p)~~ (r) "Recycling Drop Center" means a facility that receives and temporarily stores multiple source separated recyclable materials, including but not limited to glass, scrap

paper, corrugated paper, newspaper, tin cans, aluminum, plastic and oil, which materials will be transported or sold to third parties for reuse or resale.

(g) (s) "Resource Recovery Facility" means an area, building, equipment, process or combination thereof where or by which useful material or energy resources are obtained from solid waste.

(r) (t) "Solid Waste Collection Service" means the collection and transportation of solid wastes but does not include that part of a business licensed under ORS 481.345.

(s) (u) "Solid Waste" means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, waste paper and cardboard; discarded or abandoned vehicles or parts thereof; sewage sludge, septic tank and cess-pool pumpings or other sludge; commercial, industrial, demolition and construction waste; discarded home and industrial appliances; asphalt, broken concrete and bricks; manure, vegetable or animal solid and semi-solid wastes, dead animals, infectious waste as defined in ORS 459.387, petroleum contaminated soils and other wastes; provided that this definition but the term does not include:

- (1) Hazardous wastes as defined in ORS 466.005 466.005; and
- (2) Radioactive wastes as defined in ORS 469.300; and
- (3) Materials used for fertilizer or for other productive purposes or which are salvageable as such or materials which are used on land in agricultural operations and the growing or harvesting or crops and the raising of fowls or animals; and or
- (4) Explosives.

(t) (v) "Solid Waste Management Plan" means the Metro Regional Solid Waste Management Plan.

(u) (w) "Transfer Station" means a fixed or mobile facilities including but not limited to drop boxes and gondola cars normally used as an adjunct of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site. This definition does not include solid waste collection vehicles.

(v) (x) "User Fee" means a user fee established by the District under ORS 268.515.

(w) (3) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose."

Section 2. Metro Code Section 5.01.020 is amended to read:

"5.01.020 Findings and Purposes:

(a) The Council finds that the District has limited land and resources for the disposal of solid waste. It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities, or license certain facilities.

(b) To protect the health, safety and welfare of the District's residents, the Council declares it to be the public policy of the District and the purpose of this chapter to establish an exclusive a franchise and licensing system for the disposal of solid waste in the District under the authority granted to the Council by ORS Chapter 268 in order to:

- (1) Provide a coordinated regional disposal program and Solid Waste Management Plan in cooperation with federal, state and local agencies to benefit all citizens of the District.
- (2) Provide standards for the location, geographical zones and total number of disposal sites, processing facilities, transfer stations and resource recovery facilities to best serve the citizens of the District.
- (3) Ensure that rates are just, fair, reasonable and adequate to provide necessary public service.
- (4) Prohibit rate preferences and other discriminatory practices.
- (5) Ensure sufficient flow of solid waste to District's resource recovery facilities.
- (6) Maximize the efficiency of the District's Solid Waste Management Plan.
- (7) Provide for cooperation between cities and counties in the District with respect to regional franchising of solid waste disposal sites, processing facilities, transfer stations and resource recovery facilities.

- (8) Reduce the volume of waste that would otherwise be disposed of in a landfill through source reduction, recycling, reuse and resource recovery."

Section 3. Metro Code Section 5.01.030 is amended to read:

"5.01.030 Prohibited Activities: Except as provided in this chapter, it shall be unlawful:

(a) For any person to establish, operate, maintain or expand a disposal site, processing facility, transfer station or resource recovery facility unless such person is a franchisee, has obtained a license as specified in Section 5.01.230 or is exempted by Section 5.01.040 of this chapter.

(b) For a franchisee or licensee to receive, process or dispose of any solid waste not specified in the franchise agreement or license.

(c) For any person to take, transport or dispose of solid waste at any place other than a disposal site, processing facility, transfer station or resource recovery facility operated by a franchisee, licensed under Section 5.01.230 or exempted by Section 5.01.040 of this chapter except by written authority of the Council.

(d) For a franchisee to charge any rate not established by the Council or Executive Officer under this chapter."

Section 4. Metro Code Section 5.01.040 is amended to read:

"5.01.040 Exemptions:

(a) The following are exempt from the provisions of this chapter governing franchisees:

- (1) Municipal and industrial sewage treatment plants accepting sewage, sludge, septic tank and cesspool pumpings or other sludge.
- (2) Disposal sites, processing facilities, transfer stations, or resource recovery facilities owned or operated by the District.
- (3) Recycling drop centers.
- (4) Disposal sites receiving only clean, uncontaminated earth, rock, sand, soil and stone, hardened concrete, hardened asphaltic-concrete, brick and other similar materials, provided that such clean, uncontaminated materials include only those materials whose physical and chemical properties are

such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivations at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality.

(5) Persons who process, transfer or dispose of solid wastes which:

- (A) Are not putrescible, which, for the purpose of this section includes wood, dry cardboard and paper uncontaminated by food waste or petroleum products;
- (B) Have been source separated;
- (C) Are not and will not be mixed by type with other solid wastes; and
- (D) Are reused or recycled.

~~For the purpose of this section, putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.~~

- (6) Person or persons who generate and maintain residential compost piles for residential garden or landscaping purposes.
- (7) Temporary transfer stations or processing centers established and operated by local government for sixty (60) days or less to temporarily receive, store or process solid waste if the District finds an emergency situation exists.

(b) Notwithstanding Section 5.01.040(a)(2) of this chapter, the District shall comply with Section 5.01.150 (User Fees), Section 5.01.180, (Determination of Rates) subsection 5.01.070(f), and Section 5.01.130, (Administrative Procedures of Franchisees) and shall require contract operators of District-owned facilities to provide a performance bond pursuant to Section 5.01.060(b)(1)."

Section 5. Metro Code Section 5.01.060 is amended to read:

"5.01.060 Applications:

(a) Applications for a franchise or license, or for transfer of any interest in, modification, expansion, or renewal of an existing franchise or license, shall be filed on forms provided by the Executive Officer.

(b) In addition to the information required on the forms, applicants must submit the following to the Executive Officer:

- (1) Proof that the applicant can obtain and will be covered during the term of the franchise by a corporate surety bond guaranteeing full and faithful performance by the applicant of the duties and obligations of the franchise agreement. In determining the amount of bond to be required, the Executive Officer may consider the size of the site, facility or station, the population to be served, adjacent or nearby land uses, the potential danger of failure of service, and any other factor material to the operation of the franchise.
- (2) In the case of an application for a franchise transfer, a letter of proposed transfer from the existing franchisee.
- (3) Proof that the applicant for a franchise or license can obtain public liability insurance, including automotive coverage, in the amounts of not less than ~~\$300,000~~ \$500,000 for any number of claims arising out of a single accident or occurrence, \$50,000 to any claimant for any number of claims for damage to or destruction of property and, \$100,000 to any claimant for all other claims arising out of a single accident or occurrence or such other amounts as may be required by State law for public contracts.
- (4) If the applicant for a franchise or license is not an individual, a list of stockholders holding more than five (5%) percent of a corporation or similar entity, or of the partners of a partnership. Any subsequent changes in excess of five (5%) percent of ownership thereof must be reported within ten (10) days of such changes of ownership to the Executive Officer.
- (5) For an applicant for a franchise or license, a duplicate copy of the ~~DEQ disposal site permit~~

~~application all applications for necessary DEQ permits and any other information required by or submitted to DEQ pursuant to ORS Chapter 459.~~

- (6) Signed consent by the owner(s) of the property to the proposed use of the property. The consent shall disclose the property interest held by the franchisee, or licensee and the duration of that interest, and a franchisee shall include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.190(e) of this chapter if the franchise is revoked or franchise renewal is refused.
- (7) Proof that the applicant for a franchise or license has received proper land use approval, and
- (8) Such other information as the Executive Officer deems necessary to determine an applicant's qualifications.

(c) Disposal sites, transfer stations, and processing facilities which are operating on the effective date of this chapter under a District Certificate or Agreement may continue service under the conditions of their District Certificate or Agreement until their franchise or license application is granted or denied provided, however, if an abbreviated application form provided by the Executive Officer has been submitted to the District within thirty (30) days after receipt of such application. Applications filed pursuant to this section shall not be unreasonably denied.

(d) An incomplete or insufficient application shall not be accepted for filing."

Section 6. Metro Code Section 5.01.130 is amended to read:

"5.01.130 Administrative Procedures for Franchisees and Licensees:

(a) Unless otherwise specified by the Executive Officer, the following accounting procedure shall be used for charging, collecting and recording fees and charges:

- (1) Fees and charges shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale approved by the National Bureau of Standards

and State of Oregon may be used for weighing waste.

- (2) Fees and charges collected in cash shall be separately recorded on a multi-total cash register. The franchisee or licensee shall total the fees and charges separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. The franchisee or licensee shall reconcile the bank account each month.
- (3) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.
- (4) Where a fee or charge is levied and collected on an accounts receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

(b) Each month at the time of payment, the franchisee or licensee must file with the Executive Officer, a statement including without limitation the following information:

- (1) Name and address of the franchisee.
- (2) District registration number.
- (3) Month and year of each report.
- (4) Number of truckloads received daily.
- (5) Daily number of cars, pickups, trailers, and other small hauling vehicles.
- (6) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompact, minimum loads and special loads, or by other characteristics as specified in the conditions for approval.
- (7) Detailed explanation of any adjustments made to the amount of fees paid pursuant to Section 5.01.150(e).
- (8) Signature and title of the franchisee, licensee or its agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a

franchise or penalties as provided in Section 5.01.210.

(c) Every franchisee or licensee shall keep such records, receipts or other pertinent papers and information in such form as the District may require. The Executive Officer, ~~or his authorized agent in writing,~~ may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigations as may be necessary to verify the accuracy of any return made, or, if no return is made by the franchisee, to ascertain and determine the amount required to be paid.

(d) Fees and charges owing to the District from the franchisee or licensee which are not paid when due shall bear a late charge equal to one and one-half percent (1-1/2%) of the amount unpaid for each month or portion thereof such fees or charges remain unpaid."

Section 7. Metro Code Section 5.01.140 is amended to read:

"5.01.140 Franchise and License Fees:

(a) The Council shall establish an annual franchise fee which and license fees that it may revise at any time upon thirty (30) days written notice to each franchisee and/or licensee and an opportunity to be heard.

(b) The Franchise fee and license fees shall be in addition to any other fee, tax or charge imposed upon a franchisee or licensee.

(c) The A franchisee or licensee shall pay the franchise or license fee in the manner and at the time required by the District."

Section 8. Metro Code Section 5.01.150 is amended to read:

"5.01.150 User Fees:

(a) Notwithstanding Section 5.01.040(a)(2) of this chapter, the Council will set User Fees annually, and more frequently if necessary, which fees shall apply to processing facilities, transfer stations, resource recovery facilities or disposal sites which are owned, operated, or franchised or licensed by the District or which are liable for payment of User Fees pursuant to a special agreement with the District. User Fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation. User fees shall not apply to wastes received at licensed facilities that treat petroleum contaminated soil to applicable DEQ standards. Notwithstanding any other provision of this Code,

User fees shall apply to petroleum contaminated soils disposed of by landfilling.

(b) User Fees shall be in addition to any other fee, tax or charge imposed upon a processing facility, transfer station, resource recovery facility or disposal site.

(c) User Fees shall be separately stated upon records of the processing facility, transfer station, resource recovery facility or disposal site.

(d) User Fees shall be paid to the District on or before the 20th day of each month following each preceding month of operation.

(e) There is no liability for User Fees on charge accounts that are worthless and charged off as uncollectible provided that an affidavit is filed with the District stating the name and amount of each uncollectible charge account. If the fees have previously been paid a deduction may be taken from the next payment due to the District for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, ~~is collected~~, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(f) All User Fees shall be paid in the form of a remittance payable to the District. All User Fees received by the District shall be deposited in the Solid Waste Operating Fund and used only for the administration, implementation, operation and enforcement of the Solid Waste Management Plan."

Section 9. Metro Code Section 5.01.190 is amended to read:

"5.01.190 Enforcement of Franchise or License Provisions;
Appeal:

(a) The Executive Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke, a franchise or license as provided in this section. If, in the opinion of the Executive Officer, there is sufficient evidence to suspend, modify, or to revoke a franchise or license, the Executive Officer shall notify the franchisee or licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the franchisee or licensee is unable to or refuses to cure the violation within a reasonable time after receiving the written notice thereof, the Executive Officer may, in the case of a franchise, make a recommendation to the Council that the franchise be suspended, modified or revoked, and in the case of license, issue an order of suspension, modification or revocation.

(b) In the case of a franchise, the Council may direct the Executive Officer to give the franchisee notice that the franchise is, or on a specified date shall be, suspended, modified or revoked. In the case of a license, the Executive Officer may issue such notice without prior Council approval. The notice authorized by this subsection shall be based upon the Council's reviewing authority's finding that the franchisee or licensee has:

- (1) Violated this chapter, the Code, ORS Chapter 459 or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the franchise or license application, annual operating report, or other information required to be submitted to the District;
- (3) Refused to provide adequate service at the franchised or licensed site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the franchised or licensed site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county solid waste management ordinance if such ordinances require licensees or franchisees to comply with the Metro Disposal Franchise and license Ordinance.

(c) Except as provided in subsection (d) of this section, neither the Council's revocation, modification or suspension of a franchise, nor the Executive Officer's revocation, modification or suspension of a license, shall not become effective until the franchisee or licensee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a franchisee or licensee under this chapter, the Executive Officer may, in accordance with Code Chapter 2.05, immediately suspend the franchise or license and may take whatever steps may be necessary to abate the danger. In addition the case of a franchise, the Executive Officer may authorize another franchisee or another person to provide service or to use and operate the site,

station, facilities and equipment of the affected franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a franchise or license is immediately suspended, the franchisee shall have ninety (90) days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

(e) Upon revocation or refusal to renew the franchise:

- (1) All rights of the franchisee in the franchise shall immediately be divested. If the franchise is awarded to a new franchisee, the District may require the owner or prior franchisee to sell to the new franchisee the owner's or prior franchisee's interest or a leasehold interest in the real property relating to the operation of the prior franchisee. In such a case the new franchisee shall pay an amount equal to the fair market value of the ownership or leasehold interest in the real property as soon as that amount can be determined. In any event, the prior franchisee immediately upon revocation or expiration of the franchise shall vacate the property, and the new franchisee shall have the right to occupy and use the real property so as to allow continuity of service. In addition, at the option of the new franchisee, the prior franchisee shall, upon sale or lease of the real property, convey any or all personal property relating to the operation for the fair market value of such property.
- (2) If the prior franchisee whose franchise is revoked or refused renewal under this section is not the owner of the property, the owner may only be required under this section to transfer the same property interest that the owner disclosed in the consent form submitted pursuant to Section 5.01.060(b)(6) of this chapter."

Section 10. The following Section 5.01.230 is added to and made a part of Metro Code Chapter 5.01:

"5.01.230 Issuance of License for Facility Processing Petroleum Contaminated Soil:

(a) The licensing requirements of this section shall apply as follows:

- (1) No person shall own or operate a facility for processing petroleum contaminated soil by thermal destruction, distillation, bioremediation, or any method or combination of methods that removes

petroleum contamination from the soil and either destroys or contains it, without first obtaining a license under this section. As used in this section, "bioremediation" means a process using specially cultured microorganisms to decontaminate soil under controlled conditions.

(2) An owner or operator of a mobile facility that processes petroleum contaminated soil at the site of origin and returns the treated soil to its location of origin shall not be required to obtain a license under this section, and shall not be required to remit user fees to the District for soil so treated.

(3) A person who treats or disposes of petroleum contaminated soil by ventilation or aeration shall not be required to obtain a license under this section. However, Code Section 5.05.038 imposes restrictions on treatment of petroleum contaminated soil by ventilation or aeration beginning January 1, 1992.

(b) The Executive Officer shall review a complete application for a license to process petroleum contaminated soil, and shall either deny the application, or approve it with appropriate conditions. The following shall be the basis for approval or denial of an application submitted under this section:

(1) Whether the proposed facility is consistent with the Regional Solid Waste Management Plan;

(2) Whether the type of facility is needed or preferred, given the processing capabilities and methods of existing facilities, and in consideration of a hierarchy of preferred processing methods established under state law or the Regional Solid Waste Management Plan;

(3) Whether the applicant has obtained land use authority and all necessary permits for operation of the facility. In appropriate circumstances, the Executive Officer may issue compatibility statements and otherwise participate in local, state or federal permitting, land use or other proceedings to facilitate coordination between approval authorities.

(4) Whether the applicant is capable of obtaining the minimum levels of insurance coverage required under this Code.

(5) Whether the applicant is willing and able to comply with all required license conditions.

(c) A license issued under this section shall be subject to the following conditions. The licensee or its authorized representative shall sign a statement acknowledging that the licensee is bound by all conditions set forth in the license:

(1) The licensee shall provide adequate and reliable service to persons utilizing the facility;

(2) The licensee shall give immediate notice to the District if there is a change in ownership or management of the facility, if the facility is placed in receivership or conservatorship or listed as an asset in any bankruptcy proceeding, or if the facility has temporarily or permanently ceased operations;

(3) The licensee shall establish and follow procedures for determining what materials will be accepted at the facility. The procedures must include a testing regimen sufficient to prevent hazardous or otherwise unacceptable materials from entering the facility;

(4) In addition to the information required to be submitted under Metro Code Section 5.01.130, the licensee shall keep accurate records containing the following information, and shall provide such information to the District on at least a quarterly basis in a form or format specified by the District:

(A) Amount and type of material processed at the facility;

(B) Amount and type of material delivered to, but not accepted for processing at the facility, along with the name of the individual or company attempting to deliver the material, the reason the material was rejected and, if known, the destination of the material after leaving the facility;

(C) The destination of all materials accepted at the facility, upon leaving the facility, by county and tax lot number, or by other description that clearly identifies the destination, if no tax lot number is available.

- (5) The licensee shall maintain liability insurance for the term of the license at least to the level specified in Metro Code Section 5.01.060(3), and shall give immediate notice to the District of any pending or actual cancellation of insurance required under this section;
- (6) The licensee shall comply with all federal, state, regional and local law in operation of the facility, and with all regulations, conditions and orders of a governmental authority having jurisdiction over the facility;
- (7) The licensee shall indemnify the District, Council, Executive Officer, Director, and their employees and agents, and save them harmless from any and all loss, damage, claim, expense or liability related to or arising out of the licensee's performance of or failure to perform any of its obligations under the license issued;
- (8) The licensee shall remit to the District all fees and charges specified in the Metro Code, even as fee schedules may be amended during the term of the license; and
- (9) The licensee shall comply with other conditions specified in the license, deemed by the Executive Officer to be reasonable and necessary to protect the public health, safety or welfare.

(d) The term of a license issued under this section shall be five years. An application to renew a license shall be processed in the same manner as an application for a new license.

(e) The Executive Officer shall approve or deny an application submitted under this section within 120 days of the date it is deemed to be complete, unless the applicant consents to an extension of the review period. If the Executive Officer fails to take action within the time specified in this subsection, the application shall be deemed denied, and may be appealed to the Council. The Executive Officer shall file with the Council notice of all decisions made on license applications, at the time of the decision. A final decision of the Executive Officer under this section may be appealed to the Council in the manner specified in Code Chapter 2.05, or upon motion of the Council."

Section 11. Metro Code Section 5.03.010 is amended to read:

"5.03.010 Purpose and Authority: It is the purpose of this chapter to establish solid waste disposal franchise and license fees pursuant to Code Section 5.01.140."

Section 12. Metro Code Section 5.03.020 is amended to read:

"5.03.020 Franchise and License Application Fees: Each application for issuance of a solid waste disposal franchise or license shall include and be accompanied by a franchise or license application fee in the amount of Two Hundred (\$200.00) Dollars. Such fee shall defray the District's costs of processing each application and shall be nonrefundable. No application for issuance of a solid waste disposal franchise or license shall be considered without payment of said the application fee. Facilities operating pursuant to Code Section 5.01.060(c) are exempt from this section."

Section 13. Metro Code Section 5.03.030 is amended to read:

"5.03.030 Annual Franchise and License Fees:

(a) ~~Franchisees,~~ A person issued a solid waste disposal franchise or license, shall pay to the District an annual franchise or license fee. Such fee shall be paid on or before January 1 of each year for that calendar year.

(b) Annual solid waste disposal franchise and license fees shall be THREE HUNDRED AND NO/100THS (\$300) DOLLARS per site; provided, however, that said fee shall be ONE HUNDRED AND NO/100THS (\$100) DOLLARS per site for each franchised or licensed site that only receives waste from the franchisee or licensee or a company, partnership or corporation in which the franchisee or licensee has a financial interest.

(c) ~~Franchisees~~ A person who are ~~issued franchises~~ receives a franchise or license during a calendar year shall pay a fee computed on a pro-rated quarterly basis such that one quarter of the annual fee shall be charged for any quarter or portion of a quarter that the franchise or license is in effect. The franchisee or licensee shall thereafter pay the fee annually as required by subsection (a) of this section. Franchise and license fees shall not for any reason be refundable in whole or in part. Annual franchise and license fees shall be in addition to franchise and license application fees."

Section 14. Metro Code Section 5.03.040 is amended to read:

"5.03.040 Non-Payment of Franchise or License Fee:

(a) The issuance of any franchise or license shall not be effective unless and until the annual franchise or license fee has been paid for the calendar year for which the franchise or license is issued.

(b) Annual franchise and license fees are due and payable on January 1 of each year. ~~Failure to remit said fee by said~~

~~date shall constitute all required fees in a timely manner is a violation of the Metro Code and of the franchise or license, and shall subject the franchisee or licensee to enforcement pursuant to Code Section 5.01.190 in addition to any other civil or criminal remedies the District may have."~~

Section 15. Metro Code Section 5.03.050 is amended to read:

"5.03.050 Transfer and Renewal: For purposes of this chapter, issuance of a franchise or license shall include renewal and transfer of a franchise or license. ~~provided, However, that no additional annual franchise or license fee shall be paid upon transfer or renewal when the annual franchise or license fee for the franchise or license being renewed or transferred has been paid for the calendar year in which the transfer or renewal becomes effective."~~

Section 16. The following Section 5.05.038 is added to and made a part of Metro Code Chapter 5.05:

"5.05.038 Limitations on Treatment or Disposal of Petroleum Contaminated Soil:

Effective January 1, 1992:

(a) No person shall treat, process or dispose of petroleum contaminated soil generated within the District at any location other than a facility licensed by Metro under Code Section 5.01.230 or a landfill that is constructed with a geomembrane liner and otherwise designed to contain petroleum products and by-products. Aeration, ventilation or other processing of petroleum contaminated soil at its site of origin shall continue to be allowed under permit from DEQ. A person wishing to dispose of petroleum contaminated soil at a landfill that meets the description of this section but is not a "designated facility" under Code Section 5.03.030, may only do so subject to a non-system license under Code Section 5.03.035.

(b) No person shall treat, process or dispose of petroleum contaminated soil generated outside of the District at any location within the District other than a facility licensed by Metro under Code Section 5.01.230."

Section 17. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, an

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emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1991.

Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

TSS
1051



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: September 16, 1991

Re: Ordinance No. 91-422, Relating to the Regulation of Petroleum Contaminated Soil Processing Facilities

SUMMARY

The attached analysis provides committee members with additional information concerning two policy issues related to proposed Ordinance No. 91-422, which proposes regulation of petroleum contaminated soil processing facilities. These issues are: 1) the role of the Council in regulating these facilities, and 2) whether regulation should be through a franchise or through the licensing system proposed in the ordinance. Councilor Wyers has drafted an amended ordinance that would provide for Council approval of PCS facility licenses. Staff analysis of this issue would indicate that Council approval for such regulation would be appropriate based on the following:

-- The franchise code clearly mandates that the Council franchise a broad spectrum of solid waste facilities, including processing facilities

-- Council approval would provide a check to insure that the facilities have met all regulatory requirements

-- Similar facilities are franchised with Council approval

-- Establishing a licensing program without Council license approval may set a precedent affecting future regulatory programs in areas such as construction demolition and yard debris processors

-- Several issues relating to regulation of PCS facilities, including acceptance of out-of-region material, potential loss of user fees, and the relationship between PCS facility regulation and overall regulation of the solid waste disposal system could be addressed through a license approval process

The principal distinction between the proposed licensing system and issuing a franchise would be that the licensing process would be purely administrative, without Council approval. If the committee were to determine that Council approval of PCS facility regulation is needed, then the need to establish a separate "licensing" scheme for such facilities should be questioned. The facilities could be franchised with amendments to the franchise code addressing any unique conditions that would apply only to PCS facilities.

ANALYSIS

Ordinance No 91-422 provides a "licensing" regulatory scheme for petroleum contaminated soil (PCS) processing facilities under the Metro Franchise Code (Section 5.01). At the request of Councilor Wyers, the Office of General Counsel has prepared an amended version of Ordinance 91-422. The purpose of the amendments is to provide for Council approval of the licenses issued under the proposed ordinance. As originally proposed, the licenses would have been issued by the Executive Officer without Council review.

The following specific changes in the original ordinance were made to accomplish this purpose:

Page 11, Section 9 (a), the last sentence -- as amended, provides that the Executive Officer make recommendations to the Council concerning suspending, modifying, or revoking an existing license. The council would take action on the recommendation. This is the same process used for franchisees.

Page 12, Section 9 (b),--makes necessary changes to reflect that the Council would be responsible for taking action to suspend, modify or suspend a license.

Page 14, Section 10 (b), --amended to provide for initial Council approval of licenses.

Page 16, Section 10 (f), --amended to provide that Council action to approve a license must be completed within 120 days after a completed license application is received.

In considering the need for a separate licensing program and the appropriate role of the Council, there are a number of issues to be examined. These include the nature of the current franchise code and the relationship between the "franchising" and proposed "licensing" process, the effect of establishing a "licensing" program as it may relate to future regulation of other types of solid waste facilities, and the nature of the processing facilities proposed for regulation.

FRANCHISE-LICENSING RELATIONSHIP

The current franchise code (Section 5.01.020) provides that "It is the responsibility of the Council to provide and protect such resources and to do so requires that the Council franchise disposal sites, transfer stations, processing facilities and resource recovery facilities."(emphasis added). This code section also sets standards for establishing an exclusive franchise system. The franchise code also prohibits certain activities except by franchisees, lists activities and facilities that are exempt from franchising, sets application and approval criteria, and franchise

lengths.

The code provides that all franchises must be approved by the Council.

In practice, Metro currently uses its franchise code to regulate the Forest Grove Transfer Station and eight privately-operated facilities engaged in various aspects of recycling activities. These include East County Recycling, K.B. Recycling and Marine Dropbox Service. The level of regulation is somewhat different than that included in a normal franchise agreement. For example, there are no geographic or rate-setting limitations on the franchisee. Metro has placed limitations on the amount of material that may be accepted, but these limits are generally high enough as to not interfere with the operation of the facility.

A comparison of the proposed ordinance and the existing franchise code would find that there are many similarities between the proposed licensing process and the existing franchising process. These would include:

1) the definition of "license" in the proposed ordinance provides that a license "means permission granted by Metro to operate a processing facility, resource recovery facility, or other solid waste facility as specified in this Code." By comparison, the definition of the term "franchise" in the existing code provides that franchise "means the authority given by the Council to operate a disposal site, a processing facility, a transfer station or a resource recovery facility." Both definitions include "processing facilities" such as the petroleum contaminated soils facilities that would be regulated under the ordinance.

2) under the revised code both franchisees and licensees would be subject to the same code provisions relating to the purposes of the regulatory programs and the same application requirements.

3) the present code provides that the purpose is to establish an "exclusive" franchise system. An "exclusive franchise" is defined to mean "a franchise (or franchises) which entitles the holder to the sole right to operate in a specified geographic area or in some specified manner. The term "exclusive" is removed in the revised code. As a result the purpose of the revised code would be to establish a "franchise and licensing system" based on the definitions of franchise and license noted in #1 above.

It would appear that the principal difference between "licensing" and "franchising" as provided in the original proposed ordinance would be that the licensing process would be a totally administrative process. The license would be issued by the Executive Officer or their designee. The Council would be involved only if a license denial was appealed.

FUTURE REGULATORY EFFORTS

It appears that the Solid Waste Department will be proposing several new regulatory programs for various types of solid waste processing and resource recovery facilities. These include: 1) a facility for handling high-grade recyclable paper in Washington County, a high-grade construction demolition material processing facility or facilities, construction and land clearing material processors, and yard debris processors.

The proposed RSWMP chapter dealing with Washington County facilities calls for the franchising of the high-grade paper facility. At the same time, a memo relating to regulation of construction demolition and land clearing debris processors notes that "licensing" of such processors be examined. Such a "licensing" program could include rate incentives, waivers of user fees, and use of flow control.

PETROLEUM CONTAMINATED SOIL PROCESSING FACILITIES

The development of the three proposed petroleum contaminated soil processing facilities may have a significant effect on the region's solid waste disposal system. First, these facilities may have a combined capacity to handle up to 200,000 tons of soil annually. The soil processed at these facilities will be reusable. Currently, over 100,000 tons of contaminated soil is landfilled at Hillsboro each year.

It is unclear whether the processing facilities will be cost competitive with landfilling. The proposed ordinance would exempt the facilities from Metro's user fees, to provide an economic incentive to use the facilities. If a significant portion of the region's contaminated soils are diverted to these facilities, Metro could lose substantial user fee revenue.

The ordinance provides no restrictions on accepting material from outside the region. If the facilities provide a cheaper disposal alternative to landfilling, it could be anticipated that soil from other areas could be transported to the facilities for processing.

CONCLUSIONS

There are two principal policy considerations concerning proposed Ordinance 91-422. These are the level of Council involvement in the regulation of PCS processing facilities and whether it is necessary to create a separate "licensing" scheme in addition to the existing franchising process.

There are several factors that would support the need for Council approval of PCS facility regulation. These include:

1) The franchise code clearly mandates that the Council establish a process for franchising a broad spectrum of solid waste disposal facilities, including processing and resource recovery facilities. This process has historically included Council approval of such franchises. This requirement allows the Council to exercise oversight over the development of the entire network of solid waste disposal and processing facilities. In addition, it gives the Council the ability to influence the development of certain types of facilities to insure that the goals of the Regional Solid Waste Management Plan are met.

2) Council approval provides a check to insure that all relevant Code requirements relating to the regulation of a particular facility have been met and that the licensing process has been conducted in a fair and impartial manner.

3) The proposed ordinance offers no rationale that would justify the need for a new administrative licensing process for PCS processing facilities. In fact, the currently proposed PCS facilities are similar to other types of recycling facilities that are franchised by Metro. In addition, the potential effect of these facilities on the solid waste stream by reducing the amount of PCS that is landfilled may actually be greater than facilities that are currently franchised.

4) Establishing a licensing program for PCS facilities may set a precedent affecting future Council consideration of regulatory schemes for other types of similar facilities. The proposed ordinance offers no clear distinctions between a franchise and a licensing program, except that the licensing program would be purely administrative function. As defined in the proposed ordinance, either type of regulation could apply to a broad spectrum of facilities.

As regulatory programs for high-grade recycling, construction demolition, land clearing and yard debris processors are developed there would be no clear policy as to whether such facilities should be licensed or franchised. The mere existence of separate licensing and franchising programs could actually create confusion with regard to future regulatory programs

5) There may be several policy issues related to the regulation of PCS facilities that should be considered by the Council. These include: a) acceptance of out-of-region material, b) potential loss of user fees if significant amounts of PCS are processed instead of landfilled, and c) the relationship between the regulation of PCS facilities and other similar types of facilities.

LICENSING--FRANCHISING

If it is determined that the Council should approve the regulation of each PCS processing facility, it would appear that establishing a separate licensing program for such facilities would be unnecessary. As proposed in the ordinance, the definition of both a franchise and a license would include "processing facilities". In addition, many of the criteria and requirements that would apply to the licensing process would be the same as those set forth in the franchising code. Such duplication would not appear to be justified or needed.

If it is determined that certain criteria of the existing franchising code should not be applicable to PCS facilities, a specific exemption could be provided. And if additional requirements are needed for PCS facilities, then these could be made applicable to only such facilities.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: September 9, 1991

Re: Ordinance 91-422, For the Purpose of Amending the Metro Code to Clarify and Supplement Existing Provisions Related to the Management of Petroleum Contaminated Soils, and Declaring an Emergency

Ordinance No. 91-422 has been scheduled for consideration by the committee at the September 17, 1991 meeting.

Background

Petroleum contaminated soils (PCS) are soils into which gasoline, diesel fuel, bunker oil or other petroleum products have been introduced. The most common source of PCS is found when leaking underground storage tanks are removed. New federal requirements for the inspection and removal of such tanks has significantly increased the number of sites and the amount of PCS that is generated. The number of sites in the Metro region increased from 131 in 1988 to 529 in 1990, with a similar or even higher number expected in 1991. It is anticipated that the amount of generated PCS will continue to increase through 1993, when initial inspections of all underground tanks must be completed.

Currently there are two commonly used methods for disposing of PCS, landfilling and ventilation or aeration. Landfilling occurs at the Hillsboro Landfill under permission of the state Department of Environmental Quality. In 1990, a total of 60,000 tons of PCS were disposed of at Hillsboro, and the amount is expected to double in 1991.

Ventilation or aeration involves spreading out the PCS and allowing the contaminants to evaporate. This process can take place either at the original site of the PCS or the PCS is removed to another site. Concern has been expressed that these activities may result in new soil contamination because Oregon's high rainfall levels may carry the contaminants into the soil before they can evaporate. In addition, others have noted that harmful substances contained in the petroleum products, such as benzene, may be released into the atmosphere.

New Disposal Technologies

New processing technologies that destroy or contain and reuse PCS contaminants are now being introduced in the Metro region. These technologies allow the contaminated soil to be reused and eliminate the potential of harmful air emissions. These processes generally use heat to burn off the contaminants.

Three companies, RMAC, Oregon Hydrocarbons and the Sonas Companies are in the process of obtaining sites and various regulatory permits to build processing facilities using these new technologies. It is anticipated that all of these facilities will be in operation by March 1992. RMAC will be located near Troutdale and Oregon Hydrocarbons and Sonas in North Portland. The facilities will have a total annual capacity of 200,000 tons of PCS.

The Regional Solid Waste Management Plan (RSWMP) identifies PCS as a special waste and calls upon Metro to provide adequate disposal capacity. In addition, Metro solid waste staff has been working with DEQ in the development of new state guidelines and procedures. It is anticipated that these procedures will establish processing as the preferred method of PCS disposal, followed by ventilation and then landfilling.

The solid waste staff contends that the proposed ordinance will establish the processing of PCS as the preferred disposal method within the Metro region and provide for regulation of those developing facilities that will use new processing technologies. The department notes that the ordinance meets the RSWMP criteria, provides for environmentally sound disposal and preserves increasingly scarce landfill space.

Ordinance Provisions

The proposed ordinance addressing the following areas: 1) defining when PCS becomes solid waste and thus subject to Metro regulation, 2) timelines for the use of various disposal and processing alternatives, 3) a regulatory scheme for facilities using new processing technologies, 4) conforming and technical amendments to the franchise chapter of the Metro Code and 5) an exemption from Metro user fees for PCS processing facilities.

The ordinance provides that PCS will be considered solid waste and subject to Metro regulation when it leaves its site of origin. If PCS is processed or ventilated at the site of origin and returned to the same location it would not be regulated by Metro, but would be subject to various types of regulation by DEQ.

The ordinance would permit PCS to be ventilated at off-site locations until December 31, 1991. Beginning January 1, 1992, PCS removed from the site of origin would have to be disposed of at a landfill with a geomembrane liner (Hillsboro) or a Metro-licensed processing facility. In addition, the ordinance would provide that, effective on a date of adoption, PCS generated within Metro

boundaries could not be disposed of in a non-designated facility without a non-system license from Metro.

The ordinance provides that off-site PCS processing facilities must obtain a Metro license. According to the staff report, the license would "subject the processor to minimal Metro regulation." A license application would be reviewed and approved or denied by the Executive Officer or their designee. The application must be approved within 120 days, or it would be considered denied. License denials would be subject to appeal to the Metro Council.

Applicants would be subject to the following licensing criteria:

- 1) whether the proposed facility is consistent with RSWMP,
- 2) whether the proposed facility is needed, based on the types of existing facilities and considering the hierarchy of preferred processing methods established by state law and RSWMP,
- 3) whether the applicant has obtained necessary land use authority and permits for operation of the facility,
- 4) whether the applicant can obtain the required insurance coverages, and
- 5) whether the applicant is willing to comply with all license conditions.

Conditions to which a licensee would be subject include:

- 1) providing adequate and reliable service to persons using the facility,
- 2) providing immediate notice of any change in ownership; any receivership, conservatorship or bankruptcy proceeding affecting the facility; or the temporary or permanent cessation of operations,
- 3) establishing procedures to insure that hazardous or otherwise unacceptable material does not enter the facility,
- 4) regularly reporting certain information to Metro, including the amount and type of material entering the facility, amount and type of material rejected, and the destination of processed material leaving the facility,
- 5) maintaining required liability insurance coverage,
- 6) complying with applicable governmental laws and regulations relating to operation of the facility,
- 7) holding Metro harmless relating to the licensee's performance or failure to perform under the license issued,

- 8) paying all Metro fees and charges,
- 9) complying with other conditions specified in the license to protect the public health, safety and welfare.

The licensing requirements and conditions would be added to the franchise chapter of the Metro Code, necessitating a large number of technical and conforming amendments. In addition, the general counsel's office proposed two changes to conform the franchise chapter with other Metro Code provisions. These include, on page 3, the definition of solid waste would be amended to include manure, vegetable or animal solid or semi-solid wastes, dead animals, and infectious waste as defined in ORS 459.387. On page 7 the minimum requirement for public liability coverage insurance for all franchisees and licensees would be increased to \$500,000.

The ordinance also provides that Metro would not assess user fees at the licensed PCS processing facilities, but would continue to assess such fees when PCS is disposed of at a landfill. The intent would be to provide an economic incentive to use a processing facility.

Fiscal Impact

It is difficult to assess the fiscal impact of the licensing proposal. Most PCS is currently landfilled. Metro collects a \$13 per ton user fee for this material. The department is uncertain about how much material will continue to be landfilled after the new processing facilities begin operation. By not collecting a Metro user fee at the processing facility, the ordinance attempts to provide a financial incentive to use the processing facilities.

Assuming that the new processing facilities are operational in early 1992, during FY 1991-92 approximately 75-100,000 tons of material may be diverted to these facilities that would have otherwise been landfilled. The effect would be to reduce potential Metro revenue by \$975,000 to \$1,300,000. The amount of PCS generated on an annual basis will likely exceed 100,000 tons for several years. Thus, the potential annual revenue loss to Metro could exceed \$1.3 million based on the current user fee.

Issues and Questions

The committee may wish to address the following issues and questions:

- 1) The ordinance assumes that there would be no role for the Council in the licensing process, unless a license denial is appealed to the Council. The processing facilities that may be licensed under the proposed ordinance will be handling significant amounts of solid waste and will be using relatively new disposal technologies. It would appear that these facilities will be as important to the Metro solid waste system disposal system as other private facilities, such as East County Recycling, whose regulation

is subject to Council review. The committee may wish to establish a process for Council review of proposed licensees.

2) The effect of licensing PCS processing facilities will likely reduce Metro user fee revenue from PCS that is currently landfilled. Do current department revenue projections include this potential lost revenue?

3) The technologies that are intended to be used in the proposed processing facilities are in use elsewhere. Have any environmental or operational problems occurred at other facilities?

4) The licensing criteria provide that Metro determine whether the facility is needed. Is it the intent of the department to limit entry into this market based on the projected availability of PCS for processing?

5) The ordinance does not place any limitations on the acceptance of PCS from Oregon localities outside of the metropolitan area or from other states. Solid waste staff advises that it would be their intent to permit material from Washington to be accepted. They also acknowledge that Washington's standards relating to the ventilation of PCS currently are stricter than those in Oregon. The committee may wish to question staff, as to whether the Metro-licensed facilities will become a preferred disposal options for PCS sites located in Washington.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 91-422 FOR THE PURPOSE OF AMENDING THE METRO CODE TO CLARIFY AND SUPPLEMENT EXISTING PROVISIONS RELATED TO THE MANAGEMENT OF PETROLEUM CONTAMINATED SOILS, AND DECLARING AN EMERGENCY

Date: August 27, 1991

Presented by: Jim Goddard

PROPOSED ACTION

Ordinance No. 91-422 amends the Metro Code to clarify and supplement existing code provisions related to the management of petroleum contaminated soils.

BACKGROUND

Petroleum contaminated soils (PCS) are soils into which hydrocarbons such as gasoline, diesel fuel, bunker oil or other petroleum products have been released. The most common source of PCS is from the removal of leaking underground storage tanks. The number of leaking tanks identified and removed has increased dramatically in the past three years due to US Environmental Protection Agency regulations. In the Metro region, the number of reported leaking tank sites has increased from 131 in 1988 to 529 reported in 1990. During the first half of 1991, 284 new sites were reported to DEQ.

Currently there are two widely used options for managing PCS in the Metro region. The first is disposal at Hillsboro Landfill, which has permission from DEQ to accept such waste. Hillsboro landfill has been disposing of PCS in landfill cells that are clay lined, but do not have a less permeable geomembrane liner. In 1990, approximately 60,000 tons of PCS were received by Metro system landfills. The amount of PCS entering Hillsboro landfill in the first half of 1991 has already exceeded this amount and is expected to total 120,000 tons for this year.

The second most common method for managing PCS is ventilating or aerating the hydrocarbons to the atmosphere. It is estimated that approximately one-third of the PCS generated is treated in this manner. These methods generally involve spreading gasoline contaminated soil onto the land surface and turning it, to allow evaporation of the hydrocarbons. So much aeration is now taking place in uncontrolled circumstances, that contamination is potentially being spread to new areas in the guise of a "cleanup." High rainfall in the metropolitan area, combined with DEQ's inability to monitor all of the sites, may result in hydrocarbon pollution at otherwise clean sites and in adjacent waters. In addition, the evaporating hydrocarbons, containing benzene and other harmful substances, enter the atmosphere.

NEW APPROACH

A new option for managing PCS is currently being introduced in the metropolitan area, which includes a variety of methods to remove hydrocarbons from the soil and either destroy or contain them. These methods are superior to landfilling or ventilating in minimizing environmental impact and preserving space in landfills. The contaminate is either contained for reuse or destroyed, and the processed soil can be reused.

There are currently three processors actively developing processing facilities in the metropolitan region. RMAC, near Troutdale, is scheduled to begin processing PCS in October. Oregon Hydrocarbons, which purchased a site from the Port of Portland, expects to begin operating in November, and The Sonas Companies is currently negotiating for a North Portland property with start up expected in the first quarter of 1992. Both RMAC and Oregon Hydrocarbons have obtained land use approval and are in the process of obtaining DEQ permits. They will have a combined capacity to process over 200,000 tons of PCS per year based on 120 operating hours per week.

Hillsboro landfill is scheduled to have a geomembrane lined cell installed in September. This will bring Hillsboro in compliance with 'best management practice' for a landfill and will improve the landfill's ability to contain petroleum and other contaminants.

Under the Regional Solid Waste Management Plan (RSWMP), PCS is a substream of special wastes. Among other things, the RSWMP calls on Metro to develop solutions to special waste management problems, and to ensure that there is adequate capacity for disposal of special wastes. Emerging PCS processing technologies present the opportunity to recycle a major portion of the PCS waste stream in an environmentally sound manner, while preserving scarce landfill space.

Metro has been working closely with DEQ to develop a PCS management system. DEQ is drafting a streamlined statewide procedure for PCS that will establish the processing of PCS as a priority over ventilating and landfilling.

To encourage and aid in the proper management of PCS, it is necessary that Metro take a more active role in regulating the processing and disposal of PCS in the region. Proposed Ordinance No. 91-422 establishes Metro's regulatory role in the management of PCS.

DESCRIPTION OF PROPOSED ORDINANCE

The proposed ordinance reiterates that PCS becomes a solid waste subject to Metro regulation once it leaves its site of origin. If the PCS is processed on site by a mobile unit or ventilated on

site under DEQ permit and then returned to its location of origin, it is not considered to be a generated solid waste. Neither the person ventilating the soil on site, nor the operator of the mobile unit, will be subject to Metro's regulatory authority or fees.

Once the PCS is removed from its site of origin, it becomes a generated solid waste. The proposed ordinance would allow the soil to be transported to another location for aeration under DEQ permit until December 31, 1991. Beginning January 1, 1992, PCS removed from its site of origin must be disposed in a landfill with a geomembrane liner or treated in a Metro licensed facility. This ban on off-site aeration or ventilation would be enforced through coordination with DEQ. From the date of adoption, PCS generated within Metro boundaries could not be disposed of in a non-designated facility without a non-system license as provided for under Metro's flow control ordinance.

Upon adoption of Ordinance No. 91-422, a facility that processes PCS at a location other than its site of origin must obtain a license from Metro. The license would be non-exclusive, and is intended to subject the processor to minimal Metro regulation. The criteria for obtaining a license, as well as other requirements specific to PCS processors, are set forth in Section 9 of the proposal. As drafted, the Executive Officer or the Executive Officer's designee would review license applications and issue approvals or denials, with appeal to the Metro Council. Metro would not regulate the rates or other financial aspects of the licensee, but would require regular reports on types and quantities of material processed, as well as the destination of processed soil upon leaving the facility. The PCS facility licensing requirements would be added to the franchise chapter of the Metro Code, necessitating numerous conforming amendments. The conforming amendments are substantive because some of the existing franchise requirements would be imposed on the licensee, while others would not.

As proposed, Metro's user fees would not be assessed for PCS processed at licensed facilities, but would continue to be assessed for PCS disposed of by landfilling. This fee structure is intended to encourage proper treatment and recycling of petroleum contaminated soil. This is also consistent with existing code provisions that exempt waste processors that accomplish materials recovery and recycling as a primary function.

FINANCIAL IMPACT

Metro's user fee revenues in calendar year 1990 for disposal of 60,000 tons of PCS were \$33,000 derived from the volume based rate. Under the current weight based rates of \$13 per ton, Metro's user fee revenues for the same amount of PCS would have been \$780,000. The PCS Landfill User Fee Schedule (Attachment A) shows the potential range of financial impact of this Ordinance.

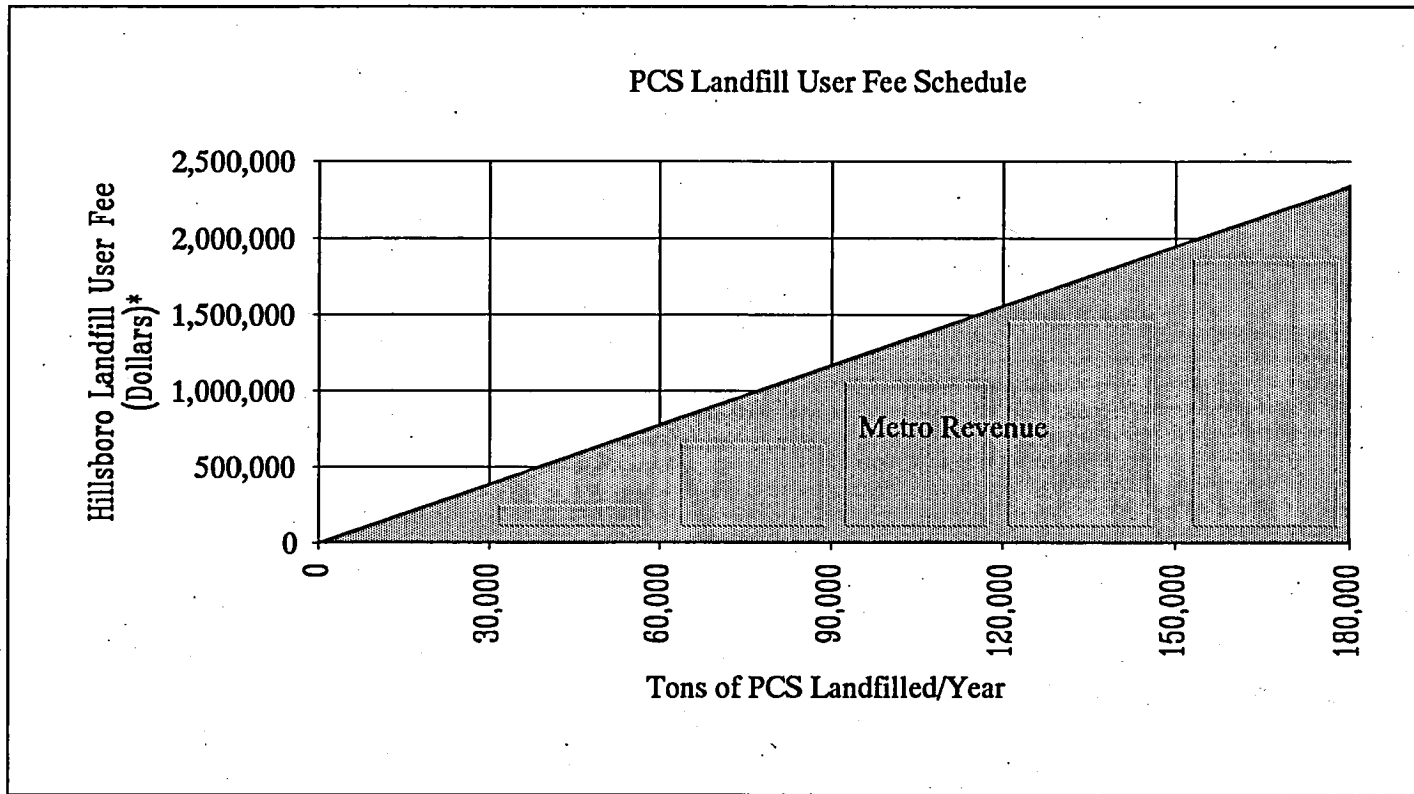
The effect of the proposed ordinance on licensed processors will be to help make processing competitive with landfilling. Tipping fees at Hillsboro landfill are still in a state of flux due to the change to a weight based system. The tipping fee at the processors will vary based on the type of contamination, but should be in the \$50 to \$70 range. Competition in price between processors should keep the system cost at acceptable levels. Off-site aeration is currently the most cost effective option since processing and disposal costs are avoided. The proposed ordinance will substantially increase the cost of managing PCS to generators who use off-site aeration as an option.

RECOMMENDATION

The Executive Officer recommends Council approval of Ordinance No. 91-422.

JG:JC
September 3, 1991
PCS/STAF0827.RPT

Attachment A



*Based on \$13/ton User Fee.

SCHNITZER STEEL PRODUCTS CO.

3200 N.W. Yeon Ave. P.O. Box 10047 Portland, Oregon 97210
Phone 503/224-9900 Telex/W.U.36-0144 FAX 503/323-2793



Council
10/10/91
6.4

October 9, 1991

Councilor Judy Wyers
METRO
2000 S.W. First Avenue
Portland, Oregon 97201

Dear Judy:

This is to follow up the conversation that I had with you and also with Bob Martin today regarding the proposed Ordinance No. 91-422. As you know, I was inquiring about the intent of the proposed ordinance and whether it was METRO's view that this change could impact or otherwise affect scrap metal recycling operations.

I appreciate your indication that it was not your intent or understanding that the proposed ordinance would impose any regulatory management on scrap metal recycling - and that the proposed ordinance was utilizing language consistent with the recently enacted S.B 66.

I did have several conversations with Bob Martin also, regarding this issue, and he also reassured me that METRO's intent and understanding of this matter was the same as yours.

Consequently, we will not be suggesting any amendments or changes to the proposed ordinance when it comes before the METRO council. As I indicated to you, scrap metal has real value and scrap that never enters the solid waste stream isn't "waste" and should not be regulated as such. Well developed markets and demand for scrap metal exist -- Schnitzer for example, has been doing business in Oregon for over 80 years -- and METRO's attention and resources, as you pointed out, are more appropriately focused on recycling and waste reduction, and resource management in markets not well developed or managed.

Thank you for making the time to consider our concerns. We appreciate your recognition and support of our concerns.

sincerely,

SCHNITZER STEEL INDUSTRIES, INC.

Loren Kramer
Vice President

cc:Bob Martin



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: October 14, 1991

TO: Rena Cusma, Executive Officer

FROM: Paulette Allen, Clerk of the Council *PA*

RE: TRANSMITTAL OF ORDINANCE NOS. 91-427, 91-428, 91-429B, 91-422B, 91-406A AND 91-416

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on October 10, 1991.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, October 17, 1991. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

I, *Lisa St. Helen*, received this memo and true copies of Ordinance Nos. 91-427, 91-428, 91-429B, 91-422B, 91-406A and 91-416 from the Clerk of the Council on 10-14-91.

ORD.MEM